

ARTICLE 23

EXPANSION AREAS ZONING CATEGORIES AND RESTRICTIONS

23-1 PURPOSE - As a part of adoption of the Comprehensive Plan, the Planning Commission adopted an Expansion Area Master Plan (EAMP) element, which sets forth provisions to guide growth within designated Expansion Areas (EA) to Lexington-Fayette County's Urban Service Area. The Expansion Area Master Plan is intended to establish a new approach to development coordination and regulation than has been previously used within the existing Urban Service Area. The Expansion Area Master Plan encourages innovative design and a range of uses which are integrated into the development; encourages development which is sensitive to the topographic features and the unique rural character of the Bluegrass; encourages the new development within the Expansion Area to function as a "community" with a mix of uses, housing types and land for economic development and community facilities, including parks, public facilities, and community centers. The purpose of this Article and its appendices is to provide the necessary implementing regulations to achieve the goals of the Expansion Area Master Plan.

23-2 GENERAL PROVISIONS - Within the Expansion Areas, the following provisions shall be applicable to all properties as appropriate:

23-2(a) APPLICABILITY - Except as specifically modified by the provisions of this Article, all other provisions of the Zoning Ordinance shall be applicable to the Expansion Areas.

23-2(b) EXISTING AGRICULTURAL USES NOT NON-CONFORMING USES - Agricultural uses of land or agricultural uses of buildings or structures which were lawful prior to the adoption of the Expansion Areas Zoning Categories and Restrictions and which would be otherwise prohibited, regulated, or restricted by the provisions of this Article, shall for the purposes of this Article be deemed permitted uses in the zone or district in which they are located and shall not be deemed non-conforming.

23-2(c) EXISTING LOTS AND EXISTING RESIDENTIAL USES - Notwithstanding any provision of this Article, any lot which was in existence at the time of the adoption of these Expansion Areas Zoning Categories and Restrictions may be used for one (1) single family house and permitted accessory uses with lot, yard and height as

in the Agricultural Rural (A-R) Zone as a principal or accessory use, as appropriate.

23-2(d) ZONING CATEGORIES PERMITTED - The only zoning categories to be permitted within the Expansion Areas shall be those expressly created in Appendix 23A. The only exception to this requirement shall be that the Lexington-Fayette Urban County Government, in conjunction with a government sponsored comprehensive rezoning of the Expansion Area, may opt for developed land to keep the zoning in existence at the time of adoption of this Article in place if it finds such action to be in the best interest of furthering the goals of the Expansion Area Master Plan. Likewise, the zoning categories created herein shall only be utilized within the Expansion Areas, and shall not be permitted within other areas of Fayette County, except in conformance with any future amendments to the Comprehensive Plan.

23-3 INTERPRETATIONS AND DEFINITIONS - The provisions of this Article shall be construed so as to liberally carry out its purpose in the interest of protecting the public health, safety and welfare by managing growth and development in the Expansion Areas. For the purposes of administration and enforcement of this Article, the following rules of construction shall apply:

- (a) In case of any difference of meaning or implication between the text of this Article and any caption, illustration, summary table, or illustrative table, the text shall control.
- (b) Unless the context clearly indicates the contrary, where a regulation involves two (2) or more items, conditions, provisions or events connected by the conjunction "and", "or" or "either ... or":
 - (1) "And" indicates that all the connected terms, conditions, provisions or events shall apply;
 - (2) "Or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination;
 - (3) "Either ... or" indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.

- (c) The word "includes" shall not limit a term to the specific example but is intended to extend its meaning to all other instances or circumstances of like kind or character.
- (d) All terms used herein shall have the same meaning as in the Lexington-Fayette Urban County Comprehensive Plan, the other provisions of the Lexington-Fayette Urban County Zoning Ordinance, and the Lexington-Fayette Urban County Land Subdivision Regulations unless otherwise indicated. The following words and phrases are defined for the purposes of this Article (and when used in the Article shall have the defined meaning regardless of whether the term is capitalized in the text):

ACCESSORY DWELLING UNIT - A residential dwelling unit of no more than 700 square feet which is incidental and subordinate to a principal single family attached or detached residential unit of at least 1,600 square feet on the property. Accessory dwelling units shall be permitted to be located within an otherwise permitted accessory structure (subject to any size limitations for such accessory structure) or contained within the principal structure.

ACREAGE, GROSS - The total number of acres within a parcel including land to the centerline of any adjoining right-of way.

ACREAGE, NET DEVELOPABLE - The total number of acres within a parcel proposed for development less the area that is designated as a greenway, or is a public right-of-way, steep slope over 30%, water body, floodplain, sinkhole or sinkhole cluster area or woodlands.

AFFIDAVIT OF DENSITY TRANSFER RIGHTS (DTR) - An affidavit of Density Transfer Rights (DTR) is a sworn, written statement by a property owner which attests that: 1) the property owner owns or has an option to purchase DTR, and 2) that the DTR have not previously been used on the parcel of land from which the Rights have been transferred or on any other parcel of land. For the purposes of this Section, an option to acquire a DTR which is specifically enforceable shall constitute ownership. An Affidavit of DTR shall be in conformance with a form provided by the Division of Planning.

AFFORDABLE HOUSING UNIT - A dwelling unit which is provided for sale to an owner-occupant household with an income which does not exceed 80% of median income (adjusted for family size) for Lexington-Fayette County, or for rent to a household with and

income which does not exceed 60% of the median income (adjusted for family size) for Lexington-Fayette County. For the purposes of this Article, a unit shall be deemed affordable to an owner-occupant if the total principal, interest, taxes and insurance does not exceed 36% of the household's income; and a unit shall be deemed affordable to a renter household if the total rent, including any tenant-paid utilities, does not exceed 30% of the household's income.

CERTIFICATE OF DENSITY TRANSFER RIGHTS (DTR) - A Certificate of DTR is a document which is issued by the Lexington-Fayette Urban County Government which attests to the existence of DTR which may be transferred to a particular Receiver Site. The certificate constitutes an official determination by Lexington-Fayette Urban County Government that particular DTR are eligible for transfer to a specific Receiver Site, subject to approval of a development plan. The Certificate is not an opinion of title by the Lexington-Fayette Urban County Government in regard to the DTR which are proposed to be transferred.

DENSITY TRANSFER RIGHT (DTR) - A residential density development right which is severable from the real property to which it is appurtenant and which is transferable to another parcel within a specific expansion area.

DIRECT VEHICULAR ACCESS - A driveway which allows a motorized vehicle to move from a residential lot on to a public or private way.

EXPANSION AREAS - The land area of Lexington-Fayette County added to the Urban Service Area under the provisions of the adopted Expansion Area Master Plan and more specifically designated as EA-1, EA-2A, EA-2B, EA-2C and EA-3; as applied to density transfers and exactions as set forth herein, each of the five designated Expansion Areas shall be considered distinct and separate.

EXPANSION AREA MASTER PLAN (EAMP) - An element of the Lexington-Fayette Urban County Government's Comprehensive Plan adopted by the Planning Commission on July 18, 1996, including any duly approved subsequent amendment. As used in this Article, the term shall also be construed to extend to any other Comprehensive Plan element expressly and directly applicable to the Expansion Areas.

FENCE, STONE - A fence either built of quarried or dressed rocks; or from rocks which have been gathered

from fields or creek bottoms; or of undressed ledge or quarried rock.

FENCE, TRANSPARENT - A fence which has at least 60% of its surface area open, and allows the free and unobstructed passage of light.

GREENWAY - Land designated as a greenway in the Expansion Area Master Plan.

OPEN SPACE, COMMON - Outdoor area of a lot or tract which is used for outdoor living, recreation, pedestrian access, or plantings, including buffer yards. Such open space shall generally be available for the use and enjoyment of larger groups of persons such as homeowners' associations, tenant associations, the general public and the like; but shall not be construed to include lands purchased by any government entity for public use, such as parks or street rights-of-way.

OPEN SPACE, GENERAL - An area not covered by structures, driveways, parking lots, walkways, streets, or other paved surfaces.

PEDESTRIAN ACCESSWAY - An improved path or sidewalk which is designed for pedestrian movement.

RECEIVER SITE - A parcel of land to which DTR are transferred.

RURAL SCENIC ROADS - A road which is designated as a Rural Scenic Road in the Expansion Area Master Plan.

SCENIC RESOURCE AREA - An area designated and mapped as a Scenic Resource Area in the Expansion Area Master Plan.

SENDER SITE - A parcel of land from which DTR are severed and transferred.

SPECIAL DESIGN AREA - An area designated and mapped as a Special Design Area in the Expansion Area Master Plan.

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APPENDIX 23A - ZONING CATEGORIES AND RESTRICTIONS

23A-1 PURPOSE - The purpose of this appendix is to set forth the zoning categories and restrictions for use in the Expansion Areas, and to establish their regulatory content.

23A-2 GENERAL PROVISIONS APPLICABLE IN ALL ZONES - The following provisions shall be applicable in all zones within the Expansion Areas:

23A-2(a) SPECIAL RURAL ROAD ACCESS REQUIREMENTS - In order to protect the unique character of rural roads within the Expansion Areas, no new street or new driveway access shall be permitted to the following roads: DeLong Road in Expansion Area 1 and 2C; northwest side of Walnut Grove Lane in Expansion Area 2A and Deer Haven Lane in Expansion Area 2B; and the southeast side of Chilesburg Road in Expansion Area 2C.

23A-2(b) FENCES - No more than fifty (50) feet of fence which is not a transparent fence or a stone fence shall be located in a single horizontal plane.

23A-2(c) ENVIRONMENTALLY SENSITIVE LAND - Except as provided under 23A-2(d), 23A-2(g), and 23A-2(u) below, any environmentally sensitive lands or geologic hazard areas shall be regulated in accordance with the provisions of Articles 6-7(l) and 6-10 of the Subdivision Regulations as applicable.

23A-2(d) STEEP SLOPE AREAS - No building or structure shall be located on any land with a slope which is greater than 30%. For areas with slopes between 15% and 30%, the provisions of Article 6-10 of the Land Subdivision Regulations shall be applicable.

23A-2(e) RURAL SERVICE AREA SETBACK - No building or structure other than transparent fences and stone fences shall be located within 100 feet of the Rural Service Area Boundary.

23A-2(f) RURAL SERVICE AREA AGRICULTURAL USE BUFFER YARD - All development shall provide a buffer yard along any boundary of a parcel proposed for development adjacent to land which adjoins the Urban/Rural Service Area Boundary, which is used for agricultural uses and which is not located across an arterial street, which shall be:

1. Fifty (50) feet in width with two parallel fences of not less than six (6) feet in height located along the outermost and innermost boundaries of the buffer

yard with barbed wire not less than six (6) feet above ground level or landscaping material along each fence which will prevent persons from climbing onto or over the fence; or

2. One hundred (100) feet in width with a fence of not less than six (6) feet in height located at the innermost boundary of the buffer yard with barbed wire not less than six (6) feet above ground level or landscaping material which will prevent persons from climbing onto or over the fence; or
3. Three hundred (300) feet in width with a fence of not less than four (4) feet in height located along the innermost boundary of the buffer yard with landscaping material which will prevent persons from climbing onto or over the fence; or
4. A buffer yard width as agreed to in the form of a legally recorded covenant by the owner of the land used for agricultural purposes which provides comparable protection to the agricultural use.

23A-2(g) GREENWAYS - All greenways shall be either dedicated to public use or encumbered by a conservation or storm water management easement, and shall be provided with sufficient points of access as necessary to achieve the intent of the Expansion Area Master Plan. No building, structure, or other development shall be permitted in a greenway except for pedestrian and/or bicycle pathways, or structures necessary for storm water management. The greenway shall be at least 100 feet on each side of the centerline of the stream, or 50' in width measured from the edge of the stream banks.

23A-2(h) PEDESTRIAN ACCESSWAYS - All properties shall have access to a pedestrian accessway, and development plans shall provide for connections between residential uses, non-residential uses, greenways, and other pedestrian accessways. The development of any parcel of land, which abuts a land in a CC zone, shall provide a pedestrian accessway directly to the Community Center.

23A-2(i) FRONT YARD DRIVEWAYS - Any driveway within a front yard of a residential dwelling:

1. On any detached dwelling unit, where no enclosed garage is provided, the driveway must extend beyond the front wall of the residence into the side or rear yard for a distance of at least 20 feet. For

attached housing, the developer and the Commission are encouraged to find alternative parking schemes within street rights-of-way as an alternative to front yard parking.

2. Where the dwelling is set back from the right-of-way less than 25 feet, the driveway may not access a garage which fronts the street, but may extend to a side or rear facing garage, or a front facing garage located more than 25 feet from the right-of-way.
3. Where the residence is set back 25 feet or greater, the driveway may access a front facing garage located no closer than 25' from the right-of-way.
4. In any case, the width of a front yard driveway shall not exceed 50% of the width of any lot at the building line as established on the final development plan or final subdivision plan, as appropriate.

23A-2(j) BUILDING AND FENCE RELATIONSHIP TO YARD ABUTTING MAJOR STREET - No residential dwelling shall be developed so that the rear of the structure abuts an arterial or collector street unless the dwelling is located not less than 200 feet from the arterial or collector street. Walls or fences other than transparent fences and stone fences shall only be permitted along the rear of any property abutting an arterial or collector street right-of-way where such are shown on the approved development plan. The Commission shall only approve such walls or fences where they are designed and planned as a part of the overall project, do not create any areas where proper maintenance would be impaired, and would not have the effect of impairing the view of open space areas.

23A-2(k) ACCESSORY STRUCTURES PROHIBITED IN FRONT YARDS - Notwithstanding any other provision of this Article, no accessory structure may be located within any yard area directly between a principal structure and any street except an alley.

23A-2(l) GENERAL LOT, YARD, AND HEIGHT REQUIREMENTS - Shall be as follows:

1. There shall be no minimum lot sizes in any Expansion Area Zone (CD, EAR 1-3, TA, ED, or CC). However, the developer shall establish restrictions for minimum and, where appropriate, maximum lot sizes on the final development plan or the final subdivision plan, as appropriate.

2. With the exception of the setback/yard required to achieve the requirements of the Rural Scenic Roads provisions, Scenic Resource Areas, and Special Design Areas, or other expressly stated yards as established elsewhere in this Article, there shall be no minimum setback or other yard requirements other than those required through the Building Code and the Fire Code. However, the developer shall establish restrictions on yards on the final development plan.

23A-2(m) DENSITY CLUSTERING AND TRANSFERS

- Shall be permitted as follows:

1. Density may be clustered on lands which are part of a single development plan under the same ownership and within the same zone and the same Expansion Area so that the average density of the site does not exceed the maximum for the zoning category.
2. Density Transfer Rights may be transferred from any land which is designated as a Special Design Area, a Scenic Resource Area, a greenway or any land which contains environmentally sensitive land when the density allocated to that land by the underlying zoning district cannot be developed on site. Such density rights may be transferred to any parcel of land within the same Expansion Area which is designated as EAR-2, EAR-3, CC or TA and used in accordance with the density limitations of those districts.
 - a) Transfers of Fractions of DTR Prohibited - The transfer of less than one DTR or any other fraction of a unit shall not be permitted.
 - b) Use of Sender Site after Transfer - Once DTR have been severed from a Sender Site, the future use of the Sender Site shall be limited to the extent of the transfer, and a deed restriction in favor of the Lexington-Fayette Urban County Government shall be recorded restricting the use of the Site in accordance with procedures established by the Division of Planning.
 - c) Aggregation of DTR Permitted on Single Receiver Site - DTR may be aggregated from different Sender Sites for development on a single Receiver Site.

d) Receiver Site Must Meet Underlying Zone District Requirements - Development using DTR shall meet each and every requirement of the Zone District.

e) Density Rights Appurtenant to Land Until Development Plan Approval Obtained - The owner of DTR may transfer such rights at any time to any person; provided, however, that the use, rights and the value thereof shall be deemed for taxation and all other purposes to be appurtenant to the land from which the rights are transferred until a development plan is approved and certified, which authorizes the use of the transferred density.

f) Procedures - The use of DTR shall be carried out as follows:

1) Application for Certificate of DTR and Approval of a Transfer - Prior to filing an application for development plan approval using DTR, the owner of a DTR shall obtain a Certificate of DTR from the Lexington-Fayette Urban County Government. In order to obtain a Certificate of DTR, the owner shall prepare an Affidavit of DTR and intent to transfer the DTR to a specific Receiver Site. Along with the Affidavit of DTR, the owner of a DTR shall attach a copy of the executed but unrecorded deed conveying the DTR and a copy of the executed but unrecorded deed restriction for the Sender Site. The affidavit shall be filed with the Division of Planning at least thirty (30) days prior to any application for development plan approval. The Division of Planning shall review the application and issue the Certificate of DTR if they determine that adequate documentation of ownership has been submitted and that the deed documents are recordable.

2) Application for Development Plan Approval - An application for development plan approval utilizing DTR shall include the Certificate of DTR and shall demonstrate that the proposed development plan complies with the regulations applicable to the Receiver Site. The deeds of conveyance and restriction shall be

recorded prior to certification of approval of the development plan.

3) Where a developer dedicates land to a public entity, at no cost, for a purpose not expressly provided for through an exaction, and the public entity accepts such dedication, the developer may transfer the density allocated by the underlying zoning category of that parcel to any parcel of land within the same Expansion Area which is designated as EAR-2, EAR-3, CC or TA.

23A-2(n) ACCESSORY DWELLING UNITS - Density, which might otherwise be implied by provisions which permit an Accessory Dwelling Unit, shall not be transferred to any other area or parcel of land.

23A-2(o) FENCING ALONG AGRICULTURAL LAND - Fencing shall be provided along the boundary of any development that adjoins land being used for agricultural purposes and which is recommended for Core Agricultural and Rural Land in the Comprehensive Plan. Such fencing shall be required to be a single standard gauge diamond mesh wire fence, of durable construction, not less than seventy-two (72) inches high set on 9-foot posts with a required 6-inch top board, unless the owner of the agricultural parcel agrees to an exemption, or to comparable protection, in the form of a legally recorded covenant.

23A-2(p) SATELLITE DISH ANTENNAS - Shall be permitted in all zones subject to the provisions of Article 15-7.

23A-2(q) FRONT YARD LANDSCAPING IN RESIDENTIAL ZONES - At least 50% of the front yard of any residential dwelling in any EAR category shall be landscaped with vegetative material of any type.

23A-2(r) BUFFERING OF USES - Buffering of uses shall be as follows:

1. Except as provided herein, where adjacent housing developments differ by more than three (3) dwelling units per acre, the Planning Commission may require a buffer yard of six (6) feet in width, with one tree for every 40' of linear boundary from the Group A, B, or C of the Plant List, as referenced by Article 18 of the Zoning Ordinance; plus a minimum 4-foot high hedge, fence, wall or

earth mound or combination thereof. In order to encourage a diversity of housing types within a single development, such buffering shall not be required where single family detached houses are interspersed with or are adjacent to detached single family houses, duplexes, tri-plexes or four-plexes in a single development.

2. Any development in an ED or CC zone which directly adjoins any EAR zone shall be required to provide a buffer yard of six feet (6') in width, with one tree for every 30' of linear boundary from the Group A, B, or C of the Plant List, as referenced by Article 18 of the Zoning Ordinance; plus a 6-foot high fence, wall or earth mound. The responsibility for such buffer shall be the ED or CC property, although the buffer yard may be shared as provided in Article 18-3(a)(3)(c).
3. Any residential or non-residential development in the Expansion Areas which abuts an interstate highway shall meet the requirements of Article 18-3(a)(1)(4) as for a residential zone.

23A-2(s) SCENIC RESOURCE AREAS - Areas designated as Scenic Resource Areas shall be limited to a maximum on-site density of no more than three (3) dwelling units per five (5) acres. All development shall be clustered so that at least 80% of the portion of the development within the Scenic Resource Area is preserved as common open space or agricultural uses and is sited so as to minimize the visual impact of the development on the adjoining rural road to the greatest extent feasible. Within the Scenic Resource Areas, there shall be no parking areas and no buildings or structures other than driveways, transparent fences and stone fences permitted within 200 feet of the right-of-way of Delong Road, Winchester Road, Walnut Grove Lane, Deer Haven Lane, Faulkner Avenue and Russell Cave Road. Utilities, drainage and sanitary sewer facilities may be located within this 200-foot area only upon the approval of the Planning Commission, who shall approve such facilities only upon a finding that alternative locations are not feasible from an engineering standpoint; would result in undue hardship; or would be detrimental from an environmental standpoint. Further, the Commission shall impose conditions on the design and installation of any facility to ensure that the visual quality of the area is maintained.

23A-2(t) SPECIAL DESIGN AREAS - All development in a Special Design Area shall be clustered so that at least

60% of the portion of the development within the Special Design Area is preserved as common open space or agricultural uses, and is sited so as to minimize the visual impact of the development on the adjoining rural road to the greatest extent feasible. Within the Special Design Areas, there shall be no parking areas and no buildings or structures other than driveways, transparent fences and stone fences permitted within 200 feet of the right-of-way of Delong Road, Athens-Boonesboro Road and Chilesburg Road.

23A-2(u) BOUNDARIES OF SDAs - The boundaries of SDAs shall be as shown on the adopted Comprehensive Plan, unless it is determined during the development review process by the Planning Commission that the final boundary requires refinement based upon more detailed analysis of the final development features, such as roads; land use; topography; and view sheds. To further refine the boundary, the Planning Commission must find that the final development configuration will better implement the intent of the SDA than when the boundary was first established in the 1996 Comprehensive Plan. In all cases, the Planning Commission shall not reduce the overall land area in the SDA, nor modify the minimum setbacks from roadways established in 23A-2(t), and must adopt findings that the final boundary meets the intent of the Expansion Area Master Plan, and this Article of the Zoning Ordinance.

23A-2(v) PROTECTION OF WOODLANDS - The development of parcels of land which contain mature woodlands, tree stands, and/or significant individual trees which are identified in the Expansion Area Master Plan Natural Resources Map Series and/or Land Capability Study shall be designed and carried out so as to protect and preserve all mature trees to the maximum extent practicable. Individual trees may be removed only as necessary to carry out economically feasible development and/or to achieve the objectives of the Expansion Area Master Plan, provided that the removal of individual trees will not result in the loss of the woodlands or tree stands of which they are a part; and that the design of the development has maximized the preservation of tree stands and significant individual trees. Consideration should be given by the Planning Commission to alternative street cross-sections, street geometrics, and development designs where the developer has established that significant trees will be properly preserved as a result of such alternative designs and/or standards.

23A-2(w) AFFORDABLE HOUSING UNITS - Units that are designated as Affordable Housing Units shall be

restricted by the developer exclusively to affordable housing for a minimum period of 15 years. Further, such units shall be identified separately in the Certificate of Land Use Restriction filed for the development where the units are located, and such units shall be subject to a deed restriction in favor of the Lexington-Fayette Urban County Government which shall restrict the use of the property and shall establish monitoring procedures to ensure that the units remain affordable during the period. During the affordability period, an affordable housing unit may be sold to a non-low-income household by acquisition of a DTR, which must be assigned to the site, and repayment of any and all development exactions that may have been waived. Such site may be a receiver of a DTR only if the maximum density permitted with DTR would not be exceeded.

23A-3 SCHEDULE OF ZONES - Sections 23A-4 through 23A-10 create the zoning categories for use within the Expansion Areas and establish the requirements and restrictions within each zone. The zones are as follows:

- 23A-4 CONSERVATION DISTRICT (CD) ZONE
- 23A-5 EXPANSION AREA RESIDENTIAL 1 (EAR-1) ZONE
- 23A-6 EXPANSION AREA RESIDENTIAL 2 (EAR-2) ZONE
- 23A-7 EXPANSION AREA RESIDENTIAL 3 (EAR-3) ZONE
- 23A-8 TRANSITION AREA (TA) ZONE
- 23A-9 COMMUNITY CENTER (CC) ZONE
- 23A-10 ECONOMIC DEVELOPMENT (ED) ZONE

The terms *principal*, *accessory*, *conditional* and *prohibited*, as applied to uses and structures within the Expansion Areas, shall have their usual and customary meaning as provided elsewhere within this Zoning Ordinance. Only those uses specifically named as principal, accessory or conditional uses or substantially similar to principal, accessory or conditional uses are permitted in each zone. All uses not specifically permitted or substantially similar to permitted uses are prohibited. Prohibited uses shall include, but not be limited to, those specifically named as prohibited.

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23A-4 CONSERVATION DISTRICT (CD) ZONE

23A-4(a) INTENT - This zone is intended to provide areas within the Expansion Area for active and passive recreation and to provide neighborhood and community recreational facilities needed to serve the residents of the Expansion Area.

23A-4(b) PRINCIPAL USES

1. Outdoor commercial and noncommercial recreational facilities such as golf courses, driving ranges, zoological gardens, sportsmen's farms (excluding rifle and other firearm ranges), riding stables, fishing lakes, and outdoor swimming pools, outdoor tennis courts, outdoor skating rinks, baseball fields, soccer fields, polo fields, and the like; and including a structure not exceeding 1000 square feet for the administration of the outdoor recreational use.

23A-4(c) ACCESSORY USES

1. Private garages, storage sheds, and parking lots.

23A-4(d) CONDITIONAL USES

1. Sale of food and merchandise directly associated with the recreational activity when accessory to a principal use.
2. Lighting of outdoor recreational facilities.
3. Outdoor speakers and public address systems. Such systems shall only be permitted by the Board of Adjustment upon finding that the system would not constitute a public nuisance by creating excessive noise on the property and surrounding properties; and is a necessary adjunct to the proposed use and has been designed to serve only such need. The Board may limit such features as to the location, power, and time of operation of such systems to ensure the protection of surrounding uses and properties.
4. Temporary structures designed for use or occupancy for 61 to 180 days per 12-month period on a single property, calculating said period by cumulative consideration of the use of any and all such structures on a single property.

23A-4(e) PROHIBITED USES

1. Commercial recreational facilities such as amusement parks, bowling alleys, skating rinks, pool or billiard

halls, outdoor theaters, automobile race tracks, athletic club facilities.

2. Indoor recreational facilities.

LOT, YARD AND HEIGHT REQUIREMENTS

23A-4(f) MAXIMUM HEIGHT OF A BUILDING - 35 feet.

23A-4(g) PARKING REQUIREMENTS

Outdoor Athletic Facilities - One space for every five spectator seats.

Riding Stables, Sportsmen's Farms, and Zoological Gardens - Five spaces plus one space for each employee.

Golf Courses - Three spaces for each hole on the main course.

Driving Ranges - One space per driving tee, plus one space per employee, with a minimum of five spaces.

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23A-5 EXPANSION AREA RESIDENTIAL 1 (EAR-1) ZONE

23A-5(a) INTENT - This zone is intended to provide a mixture of low density residential uses which will serve as a transition between the more intensely developed suburban neighborhoods and the Rural Service Area.

23A-5(b) PRINCIPAL USES

1. Single family, two-family, multi-family, and town-house dwellings.
2. Community Residences.
3. Golf Courses and common open spaces.
4. Churches and Sunday schools, with or without associated child care, in locations where the Comprehensive Plan recommends semi-public uses.

23A-5(c) ACCESSORY USES

1. Private garages and parking areas.
2. Accessory dwellings, as defined herein.
3. Swimming pools and tennis courts, which may include a clubhouse, as approved by the Planning Commission on a final development plan, for the use and enjoyment of the surrounding neighborhood, which may also include weight training and exercise rooms, restrooms, meeting rooms, or similar facilities.
4. Home Offices.
5. Family child care for up to six children.
6. The keeping of not more than two roomers or boarders by a resident family.

23A-5(d) CONDITIONAL USES

1. Home Occupations.
2. Family Child care for seven and not more than 12 children, provided the total number of children living or being cared for on the premises shall not exceed twelve.
3. Temporary Real Estate Sales Offices for the sale of lots located only within the subdivision in which the sales office is located, to be removed at the end of two years or when all the lots are sold, whichever comes first.
4. Clubhouse, with sale of food and merchandise, when accessory to a golf course.
5. Historic house museums.

23A-5(e) PROHIBITED USES - All uses not specifically listed as permitted shall be prohibited.

LOT, YARD, HEIGHT AND DENSITY REQUIREMENTS

23A-5(f) DWELLING UNIT DENSITY - The dwelling unit density within the EAR-1 zone shall not exceed three (3) units per gross acre. (See Special Provisions below)

23A-5(g) MAXIMUM HEIGHT OF BUILDING - 35 feet.

23A-5(h) FLOOR AREA RATIO - None; except where more than one principal residential structure is placed on a lot, the FAR shall not exceed 0.5.

23A-5(i) OFF-STREET PARKING REQUIREMENTS

1. There shall be a minimum of one space per dwelling unit for single family detached, duplex and townhouse residential units. Multi-family units shall have a minimum of 1.5 spaces per unit; except for elderly housing, which shall provide three (3) spaces for every four (4) units. One additional space shall be provided for any accessory dwelling unit.
2. **Golf Courses** - As per CD.
3. **Community Residences** - One space per every four (4) beds, plus one space for each employee on the maximum working shift, with a minimum of five (5) spaces.
4. **Accessory and Conditional Uses** - Parking shall be as provided elsewhere in the Zoning Ordinance within the zone where the use is first permitted.

23A-5(j) SPECIAL PROVISIONS

1. At least twenty-five percent (25%) of the net developable acreage of any project in the EAR-1 zone shall be open space.

23A-6 EXPANSION AREA RESIDENTIAL 2 (EAR-2) ZONE

23A-6(a) INTENT - The intent of the Expansion Area Residential 2 Zone is to provide a mixture of residential uses and housing types, to allow density transfer from areas which should not be developed, and to provide for well-designed neighborhoods.

23A-6(b) PRINCIPAL USES

1. As for EAR-1.
2. Schools for academic instruction.

23A-6(c) ACCESSORY USES - As for EAR-1.

23A-6(d) CONDITIONAL USES

1. As for EAR-1.
2. Boarding houses, rehabilitation homes, nursing homes, rest homes, and assisted living facilities. As a prerequisite requirement, sites for such uses must front on a street with a functional classification of collector or arterial.
3. Existing radio, telephone or television transmitting or relay facilities as of May 26, 2005, including line-of-sight relays and towers, except as permitted by KRS 100.324, and only under the following conditions:
 - a. Such facilities shall be operated at all times in compliance with applicable Federal, State and local laws and regulations, including all standards of the Federal Aviation Administration and the Federal Communications Commission.
 - b. No transmitting or relay tower shall be located closer than the height of the tower from another lot under different ownership, or any public or private street or highway, unless the tower is constructed to withstand a minimum wind speed of one hundred (100) miles per hour.
 - c. The plans of tower construction shall be certified by an engineer registered in the Commonwealth of Kentucky.
 - d. All towers shall be equipped with an anti-climbing device or fence to prevent unauthorized access.

23A-6(e) PROHIBITED USES - As for EAR-1.

LOT, YARD, HEIGHT AND DENSITY REQUIREMENTS

23A-6(f) DWELLING UNIT DENSITY

Minimum Density - Three dwelling units per gross acre.

Maximum Density without DTR - Six dwelling units per gross acre.

Maximum Density with DTR - Nine dwelling units per gross acre.

23A-6(g) MAXIMUM HEIGHT OF BUILDING - 35 feet.

23A-6(h) FLOOR AREA RATIO - None; except where more than one principal residential structure is placed on a lot, the FAR shall not exceed 0.75

23A-6(i) MINIMUM FRONT YARD - 5 feet.

23A-6(j) OFF-STREET PARKING REQUIREMENTS - There shall be a minimum of one space per dwelling unit for single family detached, duplex and townhouse residential units. Multi-family units shall have a minimum of 1.5 spaces per unit; except for elderly housing, which shall provide three (3) spaces for every four (4) units. One additional space shall be provided for any accessory dwelling unit.

23A-6(k) SPECIAL PROVISIONS

1. Affordable housing units shall not be considered as dwelling units for the purposes of calculating maximum density, provided the number of affordable units does not exceed eight (8) units per gross acre.
2. At least twenty-five percent (25%) of the net developable acreage of any project in the EAR-2 zone shall be open space.
3. Permitted schools shall not be located on a lot exceeding 15 acres in area.

23A-7 EXPANSION AREA RESIDENTIAL 3 (EAR-3) ZONE

23A-7(a) INTENT - The intent of the Expansion Area Residential 3 Zone is to provide a mixture of residential uses and housing types at a higher density than the other Expansion Area Residential zones, to allow density transfer from areas that should not be developed and to provide for well-designed neighborhoods.

23A-7(b) PRINCIPAL USES - As for EAR-2.

23A-7(c) ACCESSORY USES - As for EAR-2.

23A-7(d) CONDITIONAL USES - As for EAR-2.

23A-7(e) PROHIBITED USES - As for EAR-2.

LOT, YARD, HEIGHT AND DENSITY REQUIREMENTS

23A-7(f) DWELLING UNIT DENSITY

Minimum Density - Six dwelling units per gross acre.

Maximum Density without DTR - Eighteen dwelling units per gross acre.

Maximum Density with DTR - Twenty-four dwelling units per gross acre.

23A-7(g) MAXIMUM HEIGHT OF BUILDING - 60 feet.

23A-7(h) FLOOR AREA RATIO - None.

23A-7(i) MINIMUM FRONT YARD - 5 feet.

23A-7(j) OFF-STREET PARKING REQUIREMENTS - There shall be a minimum of one space per dwelling unit for single family detached, duplex and townhouse residential units. Multi-family units shall have a minimum of 1.5 spaces per unit, except for elderly housing which shall provide three (3) spaces for every four (4) units. One additional space shall be provided for any accessory dwelling unit.

23A-7(k) SPECIAL PROVISIONS

1. Affordable housing units shall not be considered as dwelling units for the purposes of calculating maximum density, provided the number of affordable units does not exceed eight (8) units per gross acre.

2. At least twenty-five percent (25%) of the net developable acreage of any project in the EAR-3 zone shall be open space.
3. Permitted schools shall not be located on a lot exceeding 15 acres in area.
4. There shall be no off-street parking permitted in a yard which abuts a collector street.

23A-8 TRANSITION AREA (TA) ZONE

23A-8(a) INTENT - The intent of the Transition Area zone is to create an overlay district to be used in conjunction with an EAR zoning category to allow for the development of residential uses and civic, cultural, religious, and educational institutions on lands which are located immediately adjacent to Community Center zones.

23A-8(b) PRINCIPAL USES

1. As for the underlying EAR zoning category.
2. Only when the Transition Area is included as an integral part of the development plan for adjacent land in the Community Center zone, then the following uses shall be permitted:
 - a) Nursing homes and rest homes.
 - b) Kindergartens, nursery schools and child care centers for four (4) or more children. A fenced and screened play area shall be provided, which shall contain not less than twenty-five (25) square feet per child.
 - c) Churches, Sunday schools and parish houses.
 - d) Buildings and facilities for social or recreational purposes operated by a non-profit organization and which are generally open to the public and do not render a service customarily carried on as a business.

23A-8(c) ACCESSORY USES - As for the underlying EAR zoning category.

23A-8(d) CONDITIONAL USES - As for the underlying EAR zoning category.

23A-8(e) PROHIBITED USES - As for the underlying EAR zoning category.

LOT, YARD, HEIGHT AND DENSITY REQUIREMENTS

23A-8(f) DWELLING UNIT DENSITY - As for the underlying EAR zoning category; except that when the property zoned TA is included as an integral part of the development plan for adjacent land in the Community Center zone, the density shall be as provided for the CC zone herein below.

23A-8(g) MAXIMUM HEIGHT OF BUILDING - As for the underlying EAR category; except that when the property

zoned TA is included as an integral part of the development plan for adjacent land in the Community Center zone, the maximum permitted height shall be 48 feet.

23A-8(h) FLOOR AREA RATIO - As for the underlying EAR zoning category; except that when the property zoned TA is included as an integral part of the development plan for adjacent land in the Community Center zone, the FAR shall be as provided for the CC zone herein below.

23A-8(i) MINIMUM FRONT YARD - 5 feet

23A-8(j) OFF-STREET PARKING REQUIREMENTS

1. Residential Uses - As per the underlying EAR category.
2. Other Permitted Uses - Parking shall be as provided elsewhere in the Zoning Ordinance within the zone where the use is first permitted.

23A-8(k) SPECIAL PROVISIONS

1. As per the underlying EAR zoning category.

23A-9 COMMUNITY CENTER (CC) ZONE

23A-9(a) INTENT -The intent of this zone is to implement the Community Center land use designation in the Expansion Area Master Plan by providing a mixture of residential uses and non-residential uses which serve the needs of the surrounding residential neighborhoods.

23A-9(b) PRINCIPAL USES

1. As for EAR-3.
2. Banks, credit agencies, security and commodity brokers and exchanges, credit institutions, savings and loan companies, holding and investment companies.
3. Offices for business, professional, governmental, civic, social, fraternal, political, religious, and charitable organizations, including but not limited to, real estate sales offices.
4. Churches, Sunday schools and parish houses.
5. Libraries, museums, art galleries, and reading rooms.
6. Medical and dental offices, clinics, and laboratories.
7. Studios for work or teaching of fine arts, such as photography; music; drama; dance and theater.
8. Community centers and private clubs.
9. Nursing and rest homes, and rehabilitation homes.
10. Computer and data processing centers.
11. Ticket and travel agencies.
12. Kindergartens, nursery schools and child care centers for four (4) or more children. A fenced and screened play area shall be provided, which shall contain not less than twenty-five (25) square feet per child.
13. Business colleges, technical or trade schools or institutions.
14. Establishments for the retail sale of food products, such as supermarkets; dairy, bakery, meat, beer, liquor, and wine and other food product stores; and provided that production of food products is permitted only for retail sale on the premises.
15. Restaurants, except as prohibited under Section 8-16(e)(14) and (15), which offer no live entertainment or dancing.
16. Establishments for the retail sale of merchandise, including clothing; shoes; fabrics; yard goods; fixtures, furnishings, and appliances, such as floor covering, radios, TV, phonograph products and other visual and sound reproduction or transmitting equipment; furniture; kitchen and laundry equipment; glassware and china; and other establishments for the retail sale of hardware and wallpaper, lawn care products; paint and other interior or exterior care products; hobby items; toys; gifts; antiques; newspapers and magazines, stationery and books; flowers; music; cameras; jewelry and luggage; business supplies and machines; prescription and non-prescription medicines and medical supplies.
17. Beauty shops, barber shops, shoe repair, self-service laundry, or laundry pick-up station, including clothes cleaning establishments of not more than 40 pounds capacity and using a closed system process.
18. Automobile service station, provided such use conforms to all requirements of Article 16.
19. Repair of household appliances.
20. Retail sale of plant nursery or greenhouse products, except as prohibited herein.
21. Outdoor miniature golf or putting courses.
22. Quick copy services utilizing xerographic or similar processes, but not utilizing offset printing methods.
23. Carnivals on a temporary basis, and upon issuance of a permit by the Division of Building Inspection, which may restrict the permit in terms of time; parking; access; or in other ways to protect public health, safety, or welfare, or deny such if public health, safety, or welfare are adversely affected. A carnival may not displace more than twenty-five percent (25%) of the minimum required parking for the site it occupies.
24. Indoor theaters.
25. Rental of equipment whose retail sale would be permitted elsewhere in this zone.
26. Arcades, including pinball, and electronic games.
27. Athletic club facilities.
28. Swimming pools, tennis courts, putting greens, and other similar commercial and non-commercial recreational uses.
29. Brew-pub.

23A-9(c) ACCESSORY USES

1. As for EAR-3.
2. Storage, excluding outdoor storage, and provided that no building for such accessory use shall have openings other than stationary windows within one hundred feet (100') of any residential zone.
3. The sale of malt beverages, wine, or alcoholic beverages when accessory to a restaurant permitted under Section 8-16(b)(3). Such accessory use shall

not devote more than twenty percent (20%) of its public floor area exclusively to the preparation and service of such beverages, nor provide any separate outside entrances or separate identification signs for those areas.

4. Parking lots and structures.
5. Satellite dish antennas as further regulated by Article 15-7.
6. One (1) or two (2) pool or billiard tables within an establishment.

23A-9(d) CONDITIONAL USES

1. As for EAR-3.
2. Drive-through facilities for the sale of goods or products or the provision of services otherwise permitted herein.
3. Mining of non-metallic minerals, but only when the proposal complies with the requirements of the Mining/Quarrying Ordinance (Code of Ordinances #252-91) and the conditions and requirements as set forth therein. The Board of Adjustment shall specifically consider and be able to find:
 - a) That the proposed use will not constitute a public nuisance by creating excessive noise, odor, traffic, dust, or damage to the environment or surrounding properties;
 - b) That a reasonable degree of reclamation and proper drainage control is feasible; and
 - c) That the owner and/or applicant has not had a permit revoked or bond or other security forfeited for failure to comply with any Federal, State or local laws, regulations or conditions, including land reclamation, pertaining to the proposed use.
4. Self-service car washes when accessory to a service station, provided that surface water from such establishments shall not drain onto adjacent property, and that adequate on-site storage lanes and parking facilities shall be provided so that no public way shall be used for such purposes.
5. Animal hospital or clinic, provided that all exterior walls are completely soundproofed; and further provided that animal pens shall be completely within the principal building and used for the medical treatment of small animals.
6. A restaurant, without live entertainment or dancing, which devotes more than twenty percent (20%) of its public floor area exclusively to the preparation and service of malt beverages, wine or alcoholic beverages.
7. Restaurants offering live entertainment and/or dancing, cocktail lounges, or nightclubs [unless

prohibited under Section 8-14(e)(14) and (15)]. Such uses shall be located at least 100 feet from any residential zone and shall be soundproofed to the maximum extent feasible by using existing technology, with noise emissions not creating a nuisance to the surrounding neighborhood.

8. Upholstery shop.
9. Outdoor speakers and public address systems. Such systems shall only be permitted by the Board of Adjustment upon findings that the system would not constitute a public nuisance by creating excessive noise on the property and surrounding properties; and is a necessary adjunct to the proposed use and has been designed to serve only such need. The Board may limit such features as the location, power, and time of operation of such systems to ensure the protection of surrounding uses and properties.
10. Gasoline pumps available to the public without an employee on site, provided a plan is approved by the Board of Adjustment for periodic inspection of the site by an employee for the following purposes:
 - a. To check on all operating equipment;
 - b. To check fire suppression system(s);
 - c. To check the condition of the fire alarm(s);
 - d. To check for indications of fuel leaks and spillage;
 - e. To remove trash from the site;
 - f. To monitor the general condition of the site.
11. Temporary structures designed for use or occupancy for 61 to 180 days per 12-month period on a single property, calculating said period by cumulative consideration of the use of any and all such structures on a single property.
12. Circuses, provided all structures are located not less than two hundred (200) feet from any residential zone; and further provided that all structures for housing animals shall be two hundred (200) feet from any residential zone, residential use, school, hospital, nursing home or rest home. A circus may not displace more than twenty-five percent (25%) of the minimum required parking for the site it occupies.

23A-9(e) PROHIBITED USES

1. As for EAR-3.
2. As for A-R, except as expressly permitted herein.
3. Any use dependent upon septic tanks or pit privies.
4. Pawn shops.
5. Golf driving ranges.
6. Except when accessory to a permitted automobile service station, the above- or below-ground storage of any flammable material in gaseous form, including

compressed natural gas; and the above- or below-ground storage of more than five (5) gallons of gasoline.

7. Greenhouses, plant nurseries, and garden centers.
8. Establishments primarily engaged in agricultural sales and services.
9. Warehouses, as well as storage uses, except as accessory uses herein.
10. Shops of special trade and general contractors, such as plumbing; heating; carpentry; masonry; plastering; painting; metal work; printing; electrical; sign painting; tile, mosaic and terrazzo work; electroplating; drilling; excavating; wrecking; construction, and paving. This is not intended to prohibit the administrative offices of such.
11. Manufacturing, compounding, assembling, bottling, processing and packaging and other industrial uses for sale or distribution other than as retail on the premises.
12. Truck terminals and freight yards.
13. Amusement enterprises, such as outdoor theaters, automobile racing, horse racing.
14. Kennels, outdoor runways or pens for animals.
15. Establishments engaged in the display, rental, sales, service and major repair of automobiles, repair of motorcycles, boats, trucks, travel trailers, farm implements, contractor's equipment, mobile homes, and establishments primarily engaged in the sale of supplies and parts for any of the above-mentioned vehicles or equipment, except as permitted herein.
16. Establishments for cleaning, dyeing, laundering and the like, other than self-service and pick-up stations; except for clothes cleaning establishments of not more than forty (40) pounds capacity and using a closed system process.
17. Hotel or motel.
18. Wholesale establishments.
19. Greenhouses, nurseries, hatcheries.
20. Establishments offering live entertainment in which a person simulates any sexual act or in which a person is unclothed, or in such attire, costume, or clothing as to expose to view any portion of the female breast below the top of the areola, the male or female genitalia, or the buttocks.
21. Establishments at which any employee is unclothed or in the attire, costume or clothing described above, or is clothed in such a manner as to simulate the breast, genitalia, buttocks, or any portion thereof.
22. Establishments having as a substantial or significant portion of their stock in trade for sale, rent or display, pictures, books, periodicals, magazines, appliances and similar material which are distinguished or

characterized by their emphasis on matter depicting, describing or relating to such sexual activities as (a) depiction of human genitals in a state of sexual stimulation or arousal; (b) acts of human masturbation, sexual intercourse or sodomy, or (c) holding or other erotic touching of human genitals, pubic region, buttocks or breasts.

23. Indoor motion picture theaters having as a substantial or significant portion of their use the presentation of material having as a dominant theme or characterized or distinguished by an emphasis on matter depicting, describing or relating to such sexual activities as (a) depiction of human genitals in a state of sexual stimulation or arousal; (b) acts of human masturbation, sexual intercourse or sodomy; or (c) holding or other erotic touching of human genitals, pubic region, buttocks or breasts.
24. Pool or billiard halls.

LOT, YARD, HEIGHT AND DENSITY REQUIREMENTS

23A-9(f) DWELLING UNIT DENSITY - No limitation (See Special Provisions below).

23A-9(g) MAXIMUM HEIGHT OF BUILDING - 48 feet.

23A-9(h) FLOOR AREA RATIO - A maximum of 1.0; however, the FAR may be increased to 1.5, provided that the FAR in excess of 1.0 is used for affordable housing.

23A-9(i) MINIMUM FRONT YARD - 5 feet.

23A-9(j) OFF-STREET PARKING REQUIREMENTS

1. Residential Uses - As per EAR-3.
2. All other uses - Parking shall be as provided elsewhere in the Zoning Ordinance within the zone where the use is first permitted.

23A-9(k) SPECIAL PROVISIONS

1. At least 25% of the net developable acreage of any development within a CC zone shall be open space.
2. At least 40% of the aggregated floor area of buildings within a development in a CC zone shall be devoted to residential uses as permitted in EAR-3; schools, churches and their accessory structures; and public buildings.
3. No building shall exceed 20,000 square feet in floor area, except:
 - a. a building that contains a mix of residential and non-residential uses; or

- b. a building designed and intended to be used for a school, church or public building;
 - c. a building is designed and intended to be used principally as a store selling food, produce and other grocery items (not primarily general merchandise) and not exceeding 80,000 square feet; and
 - d. up to two additional buildings, which are designed and intended to be used primarily as stores selling general merchandise, which may include food, produce and other grocery items; but only under the following conditions:
 - 1. the proposed building shall be located within a CC zone containing at least 30 net contiguous acres, and that has frontage on an interstate interchange;
 - 2. the building shall be part of an integrated development governed for all contiguously zoned CC land (excluding right-of-way) by a single development plan; and
 - 3. any building exceeding 80,000 square feet in size shall also adhere to the "Design Guidelines for 'Big-Box' Establishments," excluding guideline numbers 6 and 14, which are contrary to other provisions of the CC zone. Such design guidelines shall be met unless waived by the Planning Commission through its approval of a final development plan.
 - e. the maximum number of buildings permitted over 20,000 square feet by subsections c & d (above) shall be two.
- 4. Parking areas shall be designed so as to minimize the placement of parking between the buildings and the adjoining streets.
 - 5. Each development within a CC zone shall have access to a pedestrian accessway.
 - 6. Each development shall provide suitable facilities for the parking of bicycles.
 - 7. The development shall be screened from adjoining zones as for a business zone under Article 18-3(a)(1).
 - 8. Structures shall be sited to avoid the rear of the building facing a street (other than an alley) to the greatest extent practicable.

ARTICLE 23A-10 ECONOMIC DEVELOPMENT (ED) ZONE

23A-10(a) INTENT - The purpose of the Economic Development zone is to provide land within the Expansion Area for employment opportunities compatible with the overall character of development as provided in the Expansion Area Master Plan.

23A-10(b) PRINCIPAL USES

1. Offices for business, professional, governmental, civic, social, fraternal, political, religious and charitable organizations.
2. Computer and data processing centers.
3. Medical and dental offices, clinics and laboratories, and hospices.
4. Research development and testing laboratories or centers.
5. Mail order businesses.
6. The manufacturing, compounding, assembling, processing, packaging, or similar treatment of articles of merchandise from the following previously prepared materials: asbestos, bone, canvas, cellophane, cellulose, cloth, cork, feather, felt, fiber, fur, glass, hair, horn, leather, paper, plastics, precious and semi-precious metals, precious and semi-precious stones, rubber, sheet metal (excluding large stampings), shell, textiles, tobacco, wax, wire, wood (excluding sawmills, planing mills), and yarn.
7. The manufacturing, compounding, assembling, processing, packaging, or similar treatment of such products as: bakery goods; billboards; candy; ceramics; cosmetics; drafting instruments; electrical parts; appliances; electric or neon signs; electronic instruments; food products; meat packaging; ice cream; medical and dental instruments; musical instruments; pharmaceuticals; pottery, china, or figurines; radios; record players; rubber and metal stamps; rubber products; scientific instruments and equipment; shoes; television receivers; toiletries, soaps and detergents; toys; and watches and clocks.
8. Other industrial and manufacturing uses such as auto parts rebuilding; battery manufacturing; beverage manufacturing; dairy and non-dairy and food and non-food product bottling plants; box and crate assembly; building materials sales; rental storage yard; bag, carpet and rug cleaning and dyeing; cabinet shop; cannery; caterers; cooperage; crematory; dextrine and starch manufacturing; enameling, lacquering, and japanning; felt manufacturing; electric foundry; furniture manufacturing; heating equipment manufacturing; inflammable underground liquid storage; iron works (ornamental) and wire drawing; parcel delivery stations; phonograph record manufacturing; public utility service yard; radium extraction; stone monument works; tool manufacturing, welding, and other metal working shops.
9. Regional medical campus consisting of an integrated complex of medical service providers and related support facilities on a campus of not less than fifty (50) gross acres governed by a single development plan. The development plan must demonstrate that the regional medical campus will contain hospitals and similar in-patient treatment facilities, which may include accessory cafeterias, pharmacies and gift shops. In addition, the following uses shall be considered part of a regional medical campus: outpatient clinics and treatment facilities, surgery centers, nursing homes, medically-supervised assisted living facilities, and extended-stay hotels.
10. Colleges, universities, business colleges, technical or trade schools, and other schools and institutions for academic instruction.
11. Offices of purchasers, processors, and handlers of agricultural products, limited to administrative uses only.

23A-10(c) ACCESSORY USES

1. Off-street parking areas and structures, and loading facilities.
2. A dwelling unit for watchmen or caretakers, provided that such facilities shall be located on the same premises as the permitted use.
3. Facilities for serving food only for employees and visitors, having no direct access to the exterior and having no signs visible from the exterior of the building.
4. Offices.
5. Recreational facilities.
6. Sale of finished products related or incidental to the principal use, provided that the area set aside for sales of these related or incidental items does not constitute more than five percent (5%) of the total floor and storage area.

7. Storage and warehousing.
8. Libraries, museums and reading rooms.
9. Meeting and conference centers.
10. Establishments limited to the filling of prescriptions and retail sale of pharmaceutical and medical supplies with a drive-through window, provided it meets the following conditions:
 - a) Establishments limited to the filling of prescriptions shall be located in a building, the primary use of which is for medical uses; including, but not limited to, hospitals; in-patient treatment facilities; hospices; outpatient facilities; surgery centers; medical and dental offices, clinics or laboratories.
 - b) Establishments principally used for the retail sale of pharmaceutical and medical supplies shall be internally oriented to the site (e.g., not located on adjoining arterial streets).
 - c) It shall have no more than one public entrance and one service entrance directly to the outside of the building.
 - d) Signage for such establishments may be directly, indirectly or internally illuminated; there shall be no more than one (1) wall-mounted business sign per such establishment, not to exceed thirty-two (32) square feet in area; and no more than one (1) free standing monument type business sign, eight (8) feet in height, with a maximum size of thirty-two (32) square feet.
11. Satellite dish antennas, as further regulated by Article 15-8. When located within 200 feet of the Urban Service Area boundary, satellite dish antennas shall be limited to:
 - a) A maximum height of four (4) feet above the highest point of the principal building on the lot.
 - b) If located on the ground, satellite dish antennas shall not be visible from the road, and shall be screened with landscape material.
12. Restaurants, provided they meet the following conditions:
 - a) It shall be located in an office building or extended-stay hotel containing a minimum of 40,000 square feet of floor area.
 - b) It shall occupy not more than twenty-five percent (25%) of the building in which it is located.
 - c) It shall have no more than one public entrance and one service entrance directly to the outside of the building, and this use shall be at least one hundred fifty (150) feet from any residential zone.
 - d) It shall have no drive-in or drive-through food service.
 - e) There shall be no more than two restaurants within an office building or extended-stay hotel, provided that the 25% limitation is not exceeded.
 - f) Signs permitted per office building may be used to identify the restaurant and/or the office use.
13. For premises not permitted under 23-A(1)(c)(12) above, facilities for serving food only for employees and visitors; having no direct access to the exterior, and having no signs visible from the exterior of the building. Mobile food unit vendors may also serve this purpose, and be parked outside of a building to serve employees and visitors, provided that the requirements of Section 15-11 of the Code of Ordinances are met.

23A-10(d) CONDITIONAL USES

1. Kindergartens, nursery schools and child care centers, where enrollment of children is sponsored and licensed by established churches and non-profit community based groups; and/or where enrollment may be limited to children of employees and staff of an office, business or commercial establishment that is located within the contiguous ED zone as the proposed child care facility. A fenced and screened play area shall be provided in an area located a minimum of ten (10) feet from a collector or arterial street, and shall contain not less than twenty-five (25) square feet per child.
2. Helistops and heliports, provided such facilities conform to the requirements of all appropriate federal, state and local regulations.
3. Mining of non-metallic minerals, but only when the proposal complies with the requirements of the Mining/Quarrying Ordinance (Code of Ordinances #252-91) and the conditions and requirements as set forth therein. The Board of Adjustment shall specifically consider and be able to find:
 - a) That the proposed use will not constitute a public nuisance by creating excessive noise, odor, traffic, dust, or damage to the environment or surrounding properties;
 - b) That a reasonable degree of reclamation and proper drainage control is feasible; and
 - c) That the owner and/or applicant has not had a permit revoked or bond or other security forfeited for failure to comply with any Federal, State or local laws, regulations or conditions,

including land reclamation, pertaining to the proposed use.

4. Temporary structures designed for use or occupancy for 61 to 180 days per 12-month period on a single property, calculating said period by cumulative consideration of the use of any and all such structures on a single property.

23A-10(e) PROHIBITED USES

1. All uses listed as permitted or prohibited within the B-4, I-1 and I-2 zones, except as expressly permitted herein.
2. Radio, telephone or television transmitting or relay facilities, including line-of-sight relays and towers.
3. Dormitories.

LOT, YARD, HEIGHT AND DENSITY REQUIREMENTS

23A-10(f) MAXIMUM HEIGHT OF BUILDING - 90 feet, exclusive of mechanical equipment; or a 1:2 height-to-yard ratio, whichever is less, as measured from the contiguous ED zone boundary, provided that the average height of all buildings within the contiguous ED zone shall not exceed 48 feet.

23A-10(g) FLOOR AREA RATIO - A maximum of 0.75.

23A-10(h) MINIMUM FRONT YARD - 5 feet.

23A-10(i) OFF-STREET PARKING REQUIREMENTS - Parking shall be as provided elsewhere in the Zoning Ordinance within the zone where the use is first permitted.

Hospices - One (1) space for every two (2) beds; plus one (1) space for each employee on the maximum working shift, with a minimum of five (5) spaces.

23A-10(j) SPECIAL PROVISIONS

1. At least 25% of the net developable acreage of any development within an ED zone shall be open space.
2. No structures other than sidewalks, transparent fences, or stone fences shall be located within 5' of any public street right-of-way.

3. No more than half of the required off-street parking area shall be located between a building and any collector street.
4. Each parcel in an ED zone shall have direct access to a pedestrian accessway.
5. The development shall be screened from adjoining zones and arterial highways as for an industrial zone under Article 18-3(a)(1).
6. All uses shall be conducted in a completely enclosed building, except for outdoor storage uses, which shall be enclosed on all sides by a solid wall or fence not less than six feet (6') in height.
7. All buildings and structures shall be at least one hundred (100) feet from any residential zone, unless the portion within that distance has no openings except stationary windows and doors that are designed and intended solely for pedestrian access.
8. No buildings or structures in the ED zone, other than driveways, transparent fences and stone fences, shall be located in a Scenic Resource Area; however, the Scenic Resource Area may be used to calculate the required floor area ratio.
9. No outdoor loud speakers shall be permitted.
10. No portion of a regional medical campus shall be located within 1,000 feet of the boundary of the Urban Service Area.
11. There shall be no more than one extended-stay hotel for a regional medical campus that contains 100 acres or less; a second extended-stay hotel is permitted for a regional medical campus that contains more than 100 acres, provided that there shall be no more than two (2) extended-stay hotels in a regional medical campus. The extended-stay hotel shall be: a) a part of a building that also contains medical facilities permitted on the campus; or b) physically connected by interior access ways to facilities containing medical services permitted on the campus. Extended-stay hotels shall be internally oriented to the site (e.g., not located on adjoining arterial streets).

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APPENDIX 23B - EXPANSION AREAS PROCEDURES AND REQUIREMENTS

23B-1 PURPOSE - The purpose of this appendix is to create and define procedures and requirements for approval of development within the Expansion Areas of the Lexington-Fayette County Urban Service Area.

23B-2 PRELIMINARY AND FINAL DEVELOPMENT PLAN REQUIRED - A preliminary development plan shall be required as specified in Article 21-3 in conjunction with any zone map amendment request in the Expansion Area. The standards and procedures specified in Articles 21-4, 21-5 and 21-6 shall be applicable. No development activity, building, or occupancy of property shall be permitted unless and until a final development plan has been approved by the Planning Commission. The development plan shall limit and control the issuance of all building and occupancy permits, and shall restrict the construction, location, and use of all land to the conditions as set forth in the plan.

23B-3 INTERIM AGRICULTURAL USES EXCEPTED - The only exception from the provisions of 23B-2 above shall be the principal permitted uses as set forth for the A-R zone in Article 8-1. Such uses, including the construction of one principal single family dwelling, shall be permitted by right, subject to the typical requirements of law contained in this Zoning Ordinance or other applicable ordinances for such construction, such as building permits, land disturbance permits, and the like.

23B-4 CONTENT AND FORMAT FOR FINAL DEVELOPMENT PLANS WITHIN THE EXPANSION AREAS - Final development plans required pursuant to this Article shall meet, at a minimum, all information as required for a final development plan as set forth under Article 21-6. In addition, the following shall be a required part of the final development plan and shall be submitted at the time of the application:

23B-4(a) COMPREHENSIVE PLAN COMPLIANCE STATEMENT - This document shall set forth the developer's specific actions related to natural environment, land use, open space, housing, community design, public facilities, design features and criteria, density, and similar matters to demonstrate that the final development plan complies with the "Future Land Use" and "Community Design" Elements of the adopted Expansion Area Master Plan.

23B-4(b) INFRASTRUCTURE STATEMENT - This document shall set forth a project description including

engineering and construction cost estimates prepared by a professional engineer for the public and/or private expenditures for system improvements that the developer proposes to construct, and for construction, or other development activity which will be in place prior to or in conjunction with the development. This document will demonstrate that the proposal complies with the "Infrastructure Element" of the adopted Expansion Area Master Plan. Any proposed or executed development agreement that is required or anticipated by the developer as set forth under 23C-7 herein below shall also be a part of this statement. At the time of the application, the developer shall distribute copies of the Infrastructure Statement to the Chief Administrative Officer, the Commissioner of Public Works, the Commissioner of Finance, and the Commissioner of General Services. Such officials shall review the proposed statement and provide their comments to the Division of Planning prior to Planning Commission action.

23B-4(c) OTHER INFORMATION ON THE FINAL PLAN - The final development plan shall indicate the developer's restrictions for lot sizes (minimum and, where appropriate, maximum); yard and setback restrictions; coverage restrictions; height limitations; floor area ratios; project lighting; or similar restrictive techniques to be established within the development or defined areas within it so as to achieve the purposes of the Expansion Area Master Plan and to prevent or minimize potential adverse effects upon properties within and in the vicinity of the proposed development.

23B-4(d) DTR RELATED INFORMATION - For any final development plan which proposes units permitted under a DTR, a copy of the Certificate of DTR shall be filed as a part of the application.

23B-5 REVIEW PROCEDURES - Final development plans required under this Article shall follow the development plan procedures as set forth in Article 21-4, except as specifically modified herein.

23B-5(a) STAFF REPORT ON COMPLIANCE WITH EXPANSION AREA MASTER PLAN AND INFRASTRUCTURE - In addition to all other reports and recommendations from staff and review committees provided to the Commission, the Division of Planning shall prepare and submit for Commission review a report reviewing the final development plan's compliance with

the Expansion Area Master Plan. The report shall review the statements and information provided by the developer under 23B-4(a) through (d) above, and may make specific recommendations on design changes needed to establish compliance with the Expansion Area Master Plan. The Division shall include comments from all applicable Departments involved with public facilities within the development, including the physical extent of the proposed project improvements; exactions; related capital improvements financing; regulations; and similar matters.

23B-5(b) COMMISSION HEARING AND ACTION -

The Planning Commission shall advertise and conduct at least one public hearing and shall approve, conditionally approve with conditions noted, or disapprove any request for action on a final development plan within 120 days of its filing unless the applicant agrees to an extension of time beyond such period. The minimum notice shall include a newspaper notice placed not more than 21 days, nor less than 7 days, in advance of the hearing; and the posting by the applicant of a sign in a conspicuous location on the property. The sign shall be constructed of durable material; shall not be less than four (4) feet by four (4) feet; shall state "development plan" in bold letters not less than three (3) inches in height; shall state the time, date, and location of the hearing and the phone number of the Division of Planning in letters at least one (1) inch in height; and shall be posted on the property at a location which is visible from the highest traffic volume roadway abutting the property not more than 14 days after the filing of the plan and maintained until the hearing date. The applicant shall provide an affidavit to the Planning Commission at the hearing, stating that the sign was posted as required and has been maintained on the property during the notice period to the best of the applicant's knowledge and ability.

23B-5(c) COMMISSION ACTION - No development plan shall be considered for action by the Commission until it has been reviewed by, and recommendations made by, the Subdivision Committee unless this requirement is waived by the Commission under its adopted late filing procedures. The Commission will review all staff and committee recommendations, comments made in the public hearing, and shall then act for approval, conditional approval with conditions noted, postponement, or disapproval. The Commission may modify through conditional approval or disapprove the development plan if it finds the plan does not comply with the requirements of the Zoning Ordinance, and when applicable, the Land Subdivision Regulations; or if it finds there are existing or potential flood, drainage, traffic, topographic, health,

safety, nuisance or other similar problems relating to the development of the subject property which cannot be properly mitigated.

Further, approval of the development plan will require a finding on the part of the Planning Commission that the plan is in compliance with the Infrastructure, Future Land Use, and Community Design Elements of the Expansion Area Master Plan, and the Commission may disapprove or require modifications to the development plan to ensure such compliance, and the need to prevent or minimize adverse effects upon properties within or in the vicinity of the development. The Commission shall impose conditions regarding construction of required infrastructure and the proposed development to ensure that development is supported by infrastructure consistent with the Expansion Area Master Plan and any development agreement. The Commission shall permit the construction and bonding of required infrastructure pursuant to the provisions of Section 4-7 of the Land Subdivision Regulations.

In addition to these items, development plans which seek to amend the original development plan or its approved amendments shall also be subject to the provisions of Article 21-7(e). Reasons for action of postponement or disapproval shall be fully incorporated in the Commission's minutes. The following actions by the Commission shall have the meanings so stated:

(1) APPROVAL - Means the development plan is ready to be certified by the Commission's Secretary with no further corrections or revisions of the plan required by the developer.

(2) CONDITIONAL APPROVAL - Means the development plan cannot be certified by the Commission's Secretary until the developer has complied with the conditions of approval set forth in the Planning Commission's action on the plan.

(3) POSTPONEMENT - Means that the Commission has deferred action until some future Commission meeting in order that certain clarifications can be made in regard to the development plan. No completely new re-submittal is required of the developer as is the case for disapproval.

(4) DISAPPROVAL - Means disapproval of the plan. To request new review and action, the developer must file a new application along with a filing fee, plan copies, and other material as required herein. For any

action of disapproval, the Planning Commission shall be required to make specific findings to support such action.

23B-5(d) CERTIFICATION OF APPROVAL - Within one (1) year of the Commission's approval, unless a time extension has been granted previous to the expiration date, the following steps shall be completed, or else the Commission's approval becomes null and void:

- (1) The developer shall fully comply with any conditions of approval placed on the plan by the Commission and submit the completed original tracing of the plan, including the signed owners' certification, to the Division of Planning;
- (2) The plan shall be certified by the Commission's Secretary if it is in conformance with all requirements. Required copies of the certified plan shall be made by the Division of Planning at the developer's expense.

In conjunction with any request by the developer for a time extension or re-approval of an expired plan, the Commission may require changes in the development plan when it finds that time has necessitated such changes for the health, safety and welfare of the residents of the community, or when applicable ordinances and regulations have been changed.

23B-6 SUBDIVISION OF LAND - The following provisions shall apply to subdivision of land within the Expansion Area.

23B-6(a) APPLICABILITY TO SUBDIVISIONS - Except as expressly specified in this Article, all subdivision of land within the Expansion Area shall be required to comply with all procedures, requirements and standards of the Land Subdivision Regulations for major or minor subdivisions as applicable to the nature of the proposed subdivision.

23B-6(b) APPLICABILITY TO DEVELOPMENT PLANS - Where any development plan under this Article indicates a need or intent to subdivide property, all design and improvement standards contained in the Land Subdivision Regulations shall be applicable to the development plan.

23B-6(c) DEVELOPMENT PLAN AND PRELIMINARY SUBDIVISION PLAN MAY BE COMBINED - The required development plan and preliminary

subdivision plan may be combined as set forth in Article 21-8(c).

23B-7 AMENDMENTS - Amendments to development plans under this Article shall be as provided in Article 21-7 of the Zoning Ordinance, except as modified herein above.

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APPENDIX 23C - EXPANSION AREAS DEVELOPMENT EXACTIONS

23C-1 INTENT - This Article is intended to implement and facilitate orderly growth consistent with the Expansion Area Master Plan element of the 1996 Lexington-Fayette Urban County Comprehensive Plan by assuring that new development activity is served by adequate public facilities and bears a proportionate share of the cost of improvements necessary to provide roads, parks, open space and sanitary sewer treatment, sanitary sewer transmission capacity and storm water management facilities in the Expansion Areas of Lexington-Fayette County; and to mitigate the loss of rural landscape in the Expansion Areas by providing for an exaction for preservation of undeveloped land within the Rural Service Area in the vicinity of the Expansion Areas or of community-wide significance. The provisions of this Article are intended to implement the infrastructure financing concepts contained in the Expansion Area Master Plan in a manner consistent with the laws of the Commonwealth of Kentucky. The Expansion Area Master Plan financing concepts included allocation of certain exactions at 50% to be paid prior to building permit, with the remaining 50% to be obtained from ultimate users of the property. The provisions of Section 23C-6(b) are designed to address this concept by providing mechanisms which allow for the direct or indirect recovery of exactions paid by builders/developers from such ultimate users.

23C-2 DEFINITIONS - The terms as defined herein shall apply to all of Article 23.

BUILDING PERMIT - A document issued by the Lexington-Fayette Urban County Government, pursuant to its zoning regulations, authorizing the construction, repair, alteration or addition to a structure; or authorizing the placement or relocation of a mobile home.

CAPITAL IMPROVEMENTS - Those capital improvements necessary to support new development activity and which are identified in that portion of the Lexington-Fayette Urban County Expansion Area Master Plan as public facilities which are to be financed by the imposition of an exaction.

CAPITAL IMPROVEMENT PLAN - A plan reviewed and updated annually by the Lexington-Fayette Urban County Government, which in addition to other facilities, designates the size, extent, location, need and estimated cost of public facilities to serve the need created by new development activities.

DEVELOPER - Any person who engages in development activity.

DEVELOPMENT ACTIVITY - Any construction, modification or expansion of a building, structure or use that will generate additional impact or demand on the Urban County Government's public facilities for which an exaction is imposed pursuant to this Article, which is governed by the Lexington-Fayette Urban County Zoning Ordinance and/or the Lexington-Fayette Urban County Land Subdivision Regulations.

ENCUMBER - To legally obligate by contract or otherwise commit to use by appropriation or other official act of the Lexington-Fayette Urban County Government.

EXACTION - A fee or a land dedication in lieu of a fee required pursuant to this Article, and calculated based upon the cost of capital improvements in reasonable relationship and in a proportionate share to new development activities creating the need for such capital improvements.

EXACTION CREDIT - An obligation owed by the Lexington-Fayette Urban County Government to a developer for construction of system improvements.

EXACTION CREDIT, APPLICATION OF - The act of redeeming an approved exaction credit for the payment of exactions due under this Article, and in a manner permitted under this Article.

EXACTION CREDIT, CLAIMED - The written declaration by a developer of the construction (or proposed construction) of a system improvement eligible for an exaction credit.

EXACTION CREDIT CERTIFICATES - Instruments issued to the developer by the Lexington-Fayette Urban County Government, payable only from the exaction fund in amounts equal to the actual cost of system improvements constructed by the developer, or contributions or dedication of land by the developer, which exceeds the other exactions due with respect to the developer's property. These certificates shall be used only for the payment of exactions as provided herein; or may be surrendered for payment from the Exaction Fund in an order based upon the date of surrender. Exaction credit

certificates are for the expressed purpose of reimbursing a developer for credits due for system improvements; and unless otherwise specified under a development agreement, shall not accrue interest or any other increase in value over the face amount stated in the certificate.

EXACTION DISTRICT - A geographic area identified by the Expansion Area Master Plan in which a defined set of public facilities is required to provide service to new growth and development. Any road right-of-way used to define exaction district boundaries may be considered to be within any exaction district it bounds for the purpose of using the funds collected pursuant to this Article.

EXACTION FUND - A separate fund established by the Lexington-Fayette Urban County Government exclusively to hold or pay out exactions.

EXPANSION - Means the expansion of the capacity of a public facility, and applies to all modifications designed to accommodate increased capacity, or to any capacity enhancements made reasonably necessary by new development activities.

FEEPAYOR - That person who pays an exaction, or his successor in interest.

OPEN SPACE - As used for exaction purposes only, this term is applied to undeveloped land within the Rural Service Area to be acquired or otherwise preserved in its undeveloped state and which may be used only for purposes which include recreation, agriculture, or aesthetic preservation.

PARK - A system improvement which consists of land identified in the Expansion Area Master Plan intended for acquisition by the Lexington-Fayette Urban County Government for use as a public park, or any land acquired by the Lexington-Fayette Urban County government for such purpose. For the purposes of this Article, the term "park," and the exactions attendant thereto, shall also include lands which meet all of the following criteria: 1) the land is designated as a greenway in the Expansion Area Master Plan, or has been designated as a greenway by the Planning Commission on an approved development plan; 2) the land lies outside of the post-development floodplain; and 3) the land lies outside of an area measured 100 feet in both directions from the center of the greenway.

PERSON - An individual, a corporation, a partnership, an incorporated association, or any other similar entity.

PROJECT IMPROVEMENTS - Site improvements and facilities that are planned and designed to provide service for a particular development which are not system

improvements and which are necessary solely for the use and convenience for the occupants or users of the project.

PROPORTIONATE SHARE - That portion of the cost of system improvements which is reasonably related to the demands and needs of a project.

PUBLIC FACILITY - Those facilities identified in the Expansion Area Master Plan for which exactions are imposed to pay the cost of capital improvements and include road improvements, open space acquisition, park acquisition, storm water management facilities, sanitary sewer treatment facilities and sanitary sewer transmission facilities.

PUBLIC FACILITY COSTS - Includes, but is not limited to, costs incurred to provide additional public facility capacity needed to serve new growth and development. Costs attributable to planning, design and construction, land acquisition, land improvement, design and engineering related thereto, including the cost of constructing or reconstructing system improvements or facility expansions; including, but not limited to, the construction contract price, surveying and engineering fees, related land acquisition costs (including land purchasers, court awards and costs, attorney fees, and expert witness fees) and costs associated with the provisions of Section 23C-7(b). Costs may also include expenses incurred for qualified staff or professional consultants necessary to prepare or update the Capital Improvement Plan; and administrative costs equal to five percent (5%) of the total amount of the project costs for system improvements. Public facility costs also include projected interest charges and other finance costs for system improvements if and to the extent the exactions are to be used for the payment of principal and interest on bonds, notes, or other financial obligations issued by or on behalf of the Lexington-Fayette Urban County Government to finance the Capital Improvement Plan. Such costs do not include routine and periodic maintenance expenditures, personnel training, and other operating costs.

ROADS - Streets which have been designated as required roads in the Infrastructure Element of the Expansion Area Master Plan together with all necessary appurtenances; including, but not limited to, bridges and traffic control improvements.

SANITARY SEWER TRANSMISSION LINES AND SANITARY SEWER TREATMENT FACILITIES - Those sanitary sewer system improvements identified in the Expansion Area Master Plan to serve new growth and development activity in the Expansion Areas. These public improvements are, or will be, part of the sanitary sewer system owned and operated by the Lexington-Fayette Urban County Government.

STORM WATER MANAGEMENT FACILITIES - A system improvement which provides watershed-wide management of post-development storm water, including storage, treatment, water quality facilities and discharge runoff.

SYSTEM IMPROVEMENTS - Public facilities which are designed to provide service to the Expansion Area “at large,” rather than project improvements which substantially or exclusively benefit only a single project. If an improvement or facility provides or will provide more than incidental service or facilities capacity to persons other than users or occupants of a particular project, the improvement or facility is a system improvement and shall not be considered a project improvement. The character of the improvement shall control a determination of whether an improvement is a project improvement or system improvement; and the physical location of the improvement, on-site or off-site, shall not be considered determinative of whether an improvement is a project improvement or a system improvement. The costs of system improvements, but not project improvements, are calculated as the basis for the determination of the exaction schedule.

23C-3 IMPOSITION OF EXACTIONS - Except as specifically exempted under 23C-9 herein below, any person who, after the effective date of this Article, engages in development activity within a designated Expansion Area shall pay an exaction in the manner and amount set forth herein. No exaction or other fee charge related to the construction of Expansion Area system improvements may be imposed as a condition of development activity approval except pursuant to this Article. No building permit for any development activity shall be issued by the Division of Building Inspection unless and until the required developer exaction has been paid or the Lexington-Fayette Urban County Government has approved a development agreement, pursuant to Section 23C-7(d) herein, setting out in detail how the cost of the system improvements is to be paid.

23C-4 EXACTION DISTRICTS ESTABLISHED - Exaction Districts for each public facility for which an exaction is required pursuant to this Article are hereby established as follows:

23C-4(a) ROAD EXACTION DISTRICTS:

Road Exaction District 2-A/2-B - This exaction district is composed of Expansion Areas 2-A and 2-B.

Road Exaction District 2-C - This exaction district is composed of Expansion Area 2-C.

Road Exaction District 3 - This exaction district is composed of Expansion Area 3.

23C-4(b) OPEN SPACE EXACTION DISTRICT: This exaction district is composed of Expansion Areas 1, 2-A, 2-B, 2-C and 3.

23C-4(c) SANITARY SEWER TREATMENT CAPACITY EXACTION DISTRICT: This exaction district is composed of Expansion Areas 1, 2-A, 2-B, 2-C and 3.

23C-4(d) SANITARY SEWER TRANSMISSION CAPACITY DISTRICTS:

Sanitary Sewer Transmission Capacity Exaction District 1 - This exaction district is composed of Expansion Area 1.

Sanitary Sewer Transmission Capacity Exaction District 2-A - This exaction district is composed of Expansion Area 2-A.

Sanitary Sewer Transmission Capacity Exaction District 2-B - This exaction district is composed of Expansion Area 2-B.

Sanitary Sewer Transmission Capacity Exaction District 2-C - This exaction district is composed of Expansion Area 2-C.

Sanitary Sewer Transmission Capacity Exaction District 3 - This exaction district is composed of Expansion Area 3.

23C-4(e) PARK EXACTION DISTRICTS:

Park Expansion Exaction District 2-A/2-B - This exaction district is composed of Expansion Areas 2-A and 2-B.

Park Expansion Exaction District 2-C - This exaction district is composed of Expansion Area 2-C.

23C-4(f) STORM WATER MANAGEMENT FACILITIES EXACTION DISTRICTS:

Storm Water Exaction District 2-A - This exaction district is composed of Expansion Area 2-A.

Storm Water Exaction District 2-B - This exaction district is composed of Expansion Area 2-B.

Storm Water Exaction District 2-C - This exaction district is composed of Expansion Area 2-C.

23C-5 COMPUTATION OF THE AMOUNT OF THE EXACTION - The amount of exactions shall be determined by zoning, public facility cost and acreage in accordance with a schedule adopted by resolution of the Lexington-Fayette Urban County Council. Any amendments to the Exaction Schedule, as specified under 23C-5(b), shall also be adopted by resolution of the Council.

3C-5(a) MISCELLANEOUS EXACTION PROVISIONS - The following special circumstances shall be addressed as provided below:

- (1) Inasmuch as land in the Conservation District (CD) zone is proposed for future public acquisition, there shall be no exactions imposed for any use permitted in the CD zone.

- (2) Land developed in the Transition Area (TA) zone shall be subject to an exaction based on the underlying zone.
- (3) The Exaction Schedule shall include an adjustment for the exactions of any EAR-1 property which lies in its entirety within a Scenic Resource Area. The adjustment shall be based proportionally upon the reduced on-site density. Should such density be recaptured under a Density Transfer Right, exactions shall be paid for such unit as a part of obtaining a Certificate of DTR under Article 23A-2(m)(2)(g).
- (4) In the event a zone change is granted to a category where no exaction is shown in the adopted Exaction Schedule, no development activity shall occur until the Urban County Council has amended this Article and/or the Exaction Schedule, as necessary, to create an appropriate exaction.

23C-5(b) REVIEW, ADJUSTMENT AND AMENDMENT OF EXACTIONS - The exactions set forth in this Article are based upon good faith estimates of the costs of acquiring lands for open space, parks, and infrastructure, and the costs of constructing system improvements. The Lexington-Fayette Urban County Government acknowledges that a cost estimate, which as closely as possible approximates the actual construction cost, is in the best interest of the operation of the exaction program. Therefore, beginning four months after the date of the adoption of the resolution establishing the Exaction Schedule, and on a quarterly basis thereafter, the Department of Finance and the Department of Public Works shall review the methodology report and recommend the increase or decrease of all exactions, with the exception of the Open Space Exaction, based upon the actual costs of acquiring properties or interests in properties and the actual costs of constructing system improvements. The methodology for calculation of the estimated public facility cost and exaction shall entail:

- (1) Adjusting the total estimated cost of the facility by factoring the actual costs for system improvements constructed as of the date of the calculation into the estimated cost of the system improvement to the extent those improvements have been constructed;
- (2) Subtracting from this adjusted total estimated facility cost the total committed exactions paid or due as calculated by totaling the exactions on previously recorded subdivision plats; and
- (3) Subsequently recalculating the Exaction Schedule based upon the calculations described under (1) and (2) by apportioning the remaining cost by zone and acreage of all land in the exaction district not accounted for in section 2 above.

Beginning January 1, 2002, and at least at five-year intervals thereafter, the Open Space Exaction shall be subject to such review and adjustment based on the actual cost of acquiring the interest in property. The failure to review such exactions and methodology report shall not invalidate this Article or exactions imposed pursuant to this Article. The Department of Finance shall consult with the Divisions of Engineering, Planning and other Divisions of the Urban County Government, as appropriate, in the review of the methodology report and the determination of the adjustments to the exactions.

23C-6 PAYMENT OF EXACTIONS - Any person required to pay exactions pursuant to this Article shall render such exaction to the Director of Building Inspection prior to the issuance of a building permit, except as permitted herein.

23C-6(a) EXACTIONS DUE - The amount of the exaction applicable to the property shall be shown on the final record plan of each subdivision in the Expansion Area. The calculation of the amount due may include the direct application of approved credits against such exaction, pursuant to Section 23C-7 herein; provide for deferred or phased payment of the exaction if so specified in a development agreement, or for the contribution or dedication of land in lieu of payment of exactions.

23C-6(b) PERMITTED INSTALLMENTS - Except where a development agreement provides otherwise, feepayers shall be entitled to make the entire exaction payment at the time of building permit or to pay in two equal installments. Under this installment option, 50% of the exactions due shall be paid prior to the issuance of the building permit. The second payment shall be made no later than one year from the date of issuance of the building permit. In consideration of such installment payment, the owner shall enter into a contract with the Urban County Government, which shall include agreement to the placement of a lien against the property for the exaction amount outstanding. The lien shall be subordinate to any financing for construction purposes. No interest shall be assessed against such installment payment as long as it is fully paid within one year of the issuance of the building permit. After one year, interest shall accrue on a monthly basis at a rate equal to the current interest rate of the three-month United States Treasury bill, plus 2%.

23C-6(c) DEPOSIT OF FUNDS - All exactions collected pursuant to this Article shall be identified by the Exaction District from which they were collected and promptly transferred for deposit into the appropriate Exaction Account to be held and used as provided for in this Article. Exactions shall be used solely for the purposes specified in this Article.

23C-7 DEVELOPER PROVISION OF SYSTEM IMPROVEMENTS: CALCULATION OF CREDITS AGAINST EXACTIONS - Developers seeking to construct and/or dedicate system improvements or land, and to receive credit for such against exactions otherwise due, shall be subject to the provisions of this section.

23C-7(a) CREDITS AGAINST EXACTIONS - Shall be determined as follows:

- (1) A developer shall construct and dedicate, as necessary, all project improvements required for the development. No credit shall be given for project improvements. A developer shall be entitled to construct all system improvements reflected in the Expansion Area Master Plan for the property proposed for development activity. Stormwater management facilities which are constructed in conformance with the Expansion Area Stormwater Facilities Master Plan may be constructed by the developer, and the cost of such improvement shall be credited as provided herein against exactions which would be otherwise owed. Credits shall be given for the actual cost of the construction of system improvements or contribution or dedication of land as outlined in Section 23C-7(b) by a developer at any time subsequent to the effective date of this Article and required or accepted by the Lexington-Fayette Urban County Government from the developer or predecessor in title for system improvements.
- (2) Developers wishing to claim credits for system improvements shall be subject to the procedures outlined in 23C-7(b) below. A developer shall be entitled to receive exaction credits for the construction of a system improvement only upon executing a "System Improvement Design and Construction Memorandum" or a "Development Agreement" as provided below. The system improvement design and construction memorandum shall be used only for projects not involving "special circumstances," as defined herein. Development agreements shall be required for all other system improvement projects. "Special circumstances," as used herein, shall mean any case where the system improvement involves a material deviation from the Expansion Area Master Plan; deviation from the provisions of Article 23C-7(b), its subsections, or other relevant sections of this ordinance for the calculation of exactions owed; the type or extent of system improvements; the design of the system improvements; the payment of exactions; the application of exaction credits; refunds from an Exaction Fund; the transfer of exaction credits; or the apportionment of costs or construction

responsibilities between developers, or between a developer and the Urban County Government.

23C-7(b) SYSTEM IMPROVEMENT DESIGN AND CONSTRUCTION MEMORANDUM - Prior to commencement of the design of system improvements, the developer and the Urban County Government, as represented by the Chief Administrative Officer or authorized agent, shall jointly execute a system improvement design and construction memorandum. A developer claiming credits for system improvements shall submit to the Chief Administrative Officer a detailed project description, including engineering and construction cost estimates prepared by a licensed professional engineer. In addition, the developer shall submit property appraisals prepared by professional appraisers to determine the cost of land acquisition or right-of-way dedication for system improvements. All construction must be publicly bid and must be carried out in accordance with applicable development and design standards. The Chief Administrative Officer shall refer all land and construction cost estimates to the Exaction Credit Advisory Committee, who shall review all materials and make recommendation to the Chief Administrative Officer as to their appropriateness. The Exaction Credit Advisory Committee shall consist of the following individuals or their designees: the Commissioner of Finance, the Commissioner of Public Works, the Commissioner of Law, the Director of the Division of Engineering, the Director of the Division of Planning, and the Urban County Council Administrator. The Chief Administrative Officer has the right to confirm the amount proposed to be credited by having engineering and construction cost estimates and/or property appraisals prepared for those system improvements, and by having verification of developer expenses claimed. The system improvement design and construction memorandum shall include provisions which shall establish:

- (1) The specific nature and extent of the system improvements to be constructed and eligible for credit.
- (2) That the developer shall receive credit for construction of full or partial system improvements, or for contribution or dedication of land as outlined in this Article. This credit shall take the form of either direct application against the required exaction or as exaction credit certificates in an amount which cannot exceed the eligible credits. Credits shall be permitted to be used as authorized by 23C-7(c)(3) and (4) herein below.
- (3) If the amount of the credit created by such construction, contribution or dedication is in excess of the exaction which would have been otherwise due

and owing for that improvement, the developer shall be reimbursed for such excess contribution from the Exaction Fund as provided herein.

- (4) The public bid process to be used for selection of the contractor and estimated cost for the system improvements.
- (5) The developer's management/overhead fee cost to be included in the exaction-eligible cost of the construction equal to 5% of total cost of the system improvements.
- (6) The procedures to be used to submit, evaluate and approve (if warranted) change orders to any contracted system improvement.
- (7) A statement establishing that the actual cost of the system improvement construction and/or dedication as calculated at the time of recording of the plat shall be the basis for any credits. For any system improvements not in place at the time of recording, the cost of the completion shall be covered by surety as provided generally for subdivision improvements in the Land Subdivision Regulations. For these items, the bid price for the completion of such improvements shall be used to calculate the cost of the system improvement. The memorandum shall also provide for verification through documentation required of the developer by the LFUCG; including, but not limited to, periodic submittal of invoices, proof of payment, audits or other means determined necessary by the LFUCG to ensure validity of claimed credit amounts. All such materials shall be referred to the Exaction Credit Advisory Committee, who shall make recommendations to the Chief Administrative Officer. The Chief Administrative Officer shall approve the final amount of such actual costs prior to plat recording.
- (8) A developer proposing credits for land dedication shall present property appraisals prepared by qualified professionals and a certified copy of the most recent property valuation administration assessment of the property to the Chief Administrative Officer to be used in determining the amount of credit. The Chief Administrative Officer shall have a review appraisal prepared by a professional MAI to confirm the accuracy of the appraisals submitted by the developer, and shall refer all such materials to the Exaction Credit Advisory Committee, who shall make a recommendation to the Chief Administrative Officer.
- (9) A statement affirming the understanding that no credits shall be given for project improvements.

- (10) That the total exactions required under this ordinance and the amount of exactions due after the application of any credits authorized under 23C-7(b)(2) or provisions of a development agreement shall be shown on the final plat of the subdivision. The exaction rate schedule to be used shall be the one in effect as of the date the Division of Engineering transmits its certified original of the final plat to the Division of Planning for final certification, provided the plat is recorded within 30 days of that date; otherwise, the net exaction shall be calculated upon any amended rate schedule adopted by the Urban County Council in the intervening time.

23C-7(c) CLAIMING AND APPLICATION OF CREDITS - The application of credits shall be as follows:

- (1) The dollar amount of any credits shall be applied either as a credit against exactions due for the development providing the system improvement, or for the issuance of exaction credit certificates as outlined under 23C-7(b)(2) above.
- (2) Credits must be claimed by no later than the time of the certification of the final record plan. Any credits not so claimed shall be deemed waived.
- (3) The credits for roads, parks, open space or storm water management facilities may be applied against all exactions for roads, parks, stormwater management facilities and open space owed by the developer with respect to the development. To the extent that the total credits for roads, parks, open space or storm water management facilities exceed exactions due for roads, parks stormwater management facilities and open space with respect to the developer's property, the development agreement may provide for the developer to receive a refund from the exaction fund, as outlined in 23C-7(c)(8) below.

Credits for roads, parks, stormwater management facilities and open space may be applied as follows:

- a. Credits earned in either Expansion Area 2-A or 2-B may be applied only against stormwater facilities, road, park and open space exactions in either Expansion Area 2-A or 2-B.
- b. The stormwater credit is only applicable within the specific exaction district as noted in Table A.
- c. Credits earned in Expansion Area 2-C may be applied only in Expansion Area 2-C.
- d. Credits earned in Expansion Area 3 may be applied only in Expansion Area 3.

Table A
Application of Credits for System Improvements (Other than Sanitary Sewer Capacity and Transmission)

<i>Credits for system improvements constructed in Expansion Area:</i>	<i>May be applied against exactions due in the following Expansion Districts:</i>
Expansion Area 1	N/A
Expansion Area 2-A	Roads 2-A and 2-B Open Space Parks 2-A and 2-B Storm Water Management 2-A
Expansion Area 2-B	Roads 2-A and 2-B Open Space Parks 2-A and 2-B Storm Water Management 2-B
Expansion Area 2-C	Roads 2-C Open Space Parks 2-C Storm Water Management 2-C
Expansion Area 3	Roads 3 Open Space

Table B
Application of Exaction Credits for Sanitary Sewer Transmission and Treatment Capacity

<i>Credits for Sanitary Sewer Transmission and Capacity system improvements constructed in Expansion Area:</i>	<i>May be applied against exactions due in the Sanitary Sewer Treatment Capacity District and in the following Transmission Capacity Districts:</i>
Expansion Area 1	Sanitary Sewer Transmission Capacity in Expansion Area 1
Expansion Area 2-A	Sanitary Sewer Transmission Capacity in Expansion Area 2-A
Expansion Area 2-B	Sanitary Sewer Transmission Capacity in Expansion Area 2-B
Expansion Area 2-C	Sanitary Sewer Transmission Capacity in Expansion Area 2-C
Expansion Area 3	Sanitary Sewer Transmission Capacity in Expansion Area 3

- (4) The credits for sanitary sewer transmission capacity may only be applied against exactions due for sanitary sewer transmission capacity in the Expansion Area from which credit originates, or against exactions due for sanitary sewer treatment capacity in any Expansion Area.
- (5) If the area proposed for development includes lands designated for parks in the Expansion Area Master Plan, the developer shall dedicate such lands to the Lexington-Fayette Urban County Government with credit given for the value of the land against the required exaction. If an area proposed for development includes land which is located outside the horizontal limits of the greenway and which is designated in the Expansion Area Stormwater Facilities Master Plan for stormwater management facilities, the developer shall dedicate such land. The developer shall obtain a credit for the value of such lands against any open space, park or road exactions which may be due. The value of such credit shall be computed as set forth in Article 23C-7(b)(7) and shall be applied in the same manner as credits for constructed system improvements.
- (6) In cases where the land proposed for development is entirely or substantially in an area designated in the Expansion Area Master Plan for park land, and the extent of the designation is such as to render the development of the land infeasible, the developer may enter into an agreement with the Lexington-Fayette Urban County Government establishing interim uses of the property in conformance with the Conservation District (CD) Zone, timing of acquisition, schedule of payments, and other related uses.
- (7) In the event a building permit is abandoned, credits shall be given for the full amount of any exactions paid against future exactions for the same parcel of land paid upon issuance of such building permit. A building permit shall be deemed abandoned if no construction has been commenced prior to the expiration of the building permit.
- (8) If the application of all credits against exactions exceeds the amount of the exactions due, the developer shall be repaid for the actual cost of system improvements from the Exaction Fund as monies become available with the order of payment to be the order of the date of award of the credit. Alternatively, the developer may be reimbursed in Exaction Credit certificates, which shall be used as specified within this Article. Developers desiring any other arrangement shall be required to enter into a development agreement with the LFUCG as outlined below.

23C-7(d) DEVELOPMENT AGREEMENTS - A fee-payer may propose, and the Lexington-Fayette Urban County Government may approve, a development agreement which provides for the deferred or phased payment of exactions which were not eligible for application of credits, as provided under 23C-7(c), provides for credits, provides for the dedication of land in lieu of cash payment, provides for the construction of system improvements in lieu of cash payment, provides for the repayment of credits from the exaction fund, provides for payment of interest, provides for the issuance of exaction credit certificates, or provides for any combination thereof. Any developer contemplating an activity which involves a development agreement shall submit a proposed agreement to the Chief Administrative Officer, who shall solicit comments from the Exaction Credit Advisory Committee for the determination of compliance with the provisions of this Article and the Expansion Area Master Plan. The Chief Administrative Officer shall review the proposed development agreement and transmit the proposed development agreement, together with a recommendation and the comments of the Exaction Credit Advisory Committee, to the Lexington-Fayette Urban County Council for appropriate action. The Lexington-Fayette Urban County Council shall not approve a development agreement unless it determines that the development agreement satisfies the intent and purpose of this Article, is in compliance with the Expansion Area Master Plan, is in the best interest of the Lexington-Fayette Urban County Government and is consistent with the public health, safety and welfare of the citizens of Lexington-Fayette County. The Lexington-Fayette Urban County Council has sixty (60) days from receipt of the fully completed draft development agreement to take final action on the development agreement.

23C-7(e) - Exaction Credit Certificates are transferable from one developer to another, from a developer to a property owner, and from one project to another, provided that such credits only be used in conformance with 23C-7(c)(3, 4, and 5), or as authorized under a development agreement pursuant to Article 23C-7(d).

23C-8 USE OF FUNDS - Funds collected as exactions shall be used for system improvements. No funds shall be used for periodic or routine maintenance or repair of capital facilities. Exactions shall be used exclusively for system improvements within the Exaction District which contains the project for which the fees were paid or for reimbursement from credits against exactions as authorized elsewhere in this Article. In the case of open space exactions, funds collected shall be used to acquire open space; including, but not limited to, conservation easements in the Rural Service Area, with priority to be given to land

within a one-mile radius of the boundary of the Expansion Area from which the funds were collected or pursuant to a duly adopted rural land management program. The open space funds may also be used as reimbursement for credits against exactions as authorized elsewhere in this Article. Exaction funds collected for Sanitary Sewer Transmission Capacity and for Sanitary Sewer Treatment Capacity shall be transferred to the Sanitary Sewer fund established by the Lexington-Fayette Urban County Government for sanitary sewer system improvements designed to increase capacity or otherwise accommodate sewage generated in the Expansion Areas.

Each fiscal year the Department of Finance shall present to the Lexington-Fayette Urban County Council an annual report describing the amount of exactions collected, encumbered and used during the preceding year. Monies, including any accrued interest, not encumbered in any fiscal period shall be retained in the same Exaction Fund(s) until the next fiscal year, except as provided in Section 23C-9 below. Exactions may be used for the payment of principal and interest on bonds, notes or other financial obligations issued by or on behalf of the Lexington-Fayette Urban County Government to finance system improvements.

23C-9 EXEMPTIONS - After an exaction requirement has been paid, no further exactions shall be required for any development activity. In addition, the following shall be exempted from payment of exactions:

- (a) The alteration or expansion of an existing building or use of land where no additional living units are created, where the use is not changed, where no development activity takes place, or where the proposed use shall not result in need for increased public facilities.
- (b) The construction of accessory buildings, excluding accessory dwelling units; attached garages in conjunction with a residential use; additions to structures existing at the time of adoption of this Article; or structures which will not produce additional impact on the roads, parks, open space, storm water management facilities, sanitary sewer transmission lines and sanitary sewer treatment facilities over and above those produced by the principal building, accessory dwelling units, or use of the land.
- (c) The replacement of a building, mobile home or structure that was in place on the effective date of this Article, or the replacement of a building, mobile home or structure that was constructed subsequent thereto and for which the correct exactions had been paid or otherwise provided for, with a new building, mobile home, or structure of

the same use; provided that no additional impact on the roads, parks, open space, storm water management facilities, and sanitary sewer transmission lines and sanitary sewer treatment facilities will be produced over and above those produced by the original use of the land.

- (d) The construction, alteration or expansion of publicly owned and operated school buildings or other public buildings owned, operated and occupied by local, state, or federal government agencies.
- (e) Affordable housing shall be eligible for a reduced exaction if the developer can demonstrate that the housing to be constructed will be used to provide housing for low income persons for a period of no less than fifteen (15) years. Factors to be considered in determining the amount of reduction shall include the size and scope of the project, whether other funds are available to pay for the portion of the developer exaction which is otherwise due, and whether the proposal will fulfill established goals or policies in the Comprehensive Plan and the Expansion Area Master Plan to ensure a wide range of housing options to the citizens of Lexington-Fayette County. The determination of the reduction shall be by appeal to the Exaction Appeals Committee, as outlined in Article 23C-12.
- (f) Developments located within a Scenic Resource Area which are not included in the pre-calculated reduced exaction in the Exaction Schedule shall be eligible for a reduced exaction if the developer can demonstrate that the permitted units to be developed are so low as to cause an unfair burden relative to the impact of the development. Factors to be considered in determining the amount of the reduction shall include the size and scope of the project, whether or not the right to sell density transfer rights has been forfeited, and whether the proposal will fulfill established goals or policies in the Comprehensive Plan and the Expansion Area Master Plan. The determination of the reduction shall be by appeal to the Exaction Appeals Committee as outlined in Article 23C-12.
- (g) Any person claiming exemption(s) pursuant to Section 23C-9(a) through (f) above shall submit to the Chief Administrative Officer information and documentation sufficient to permit a determination of whether such exemption claimed is proper and, if so, the extent of such exemption. Exemptions must be applied for by no later than the time of the application for a building permit. Any exemptions not so applied for shall be deemed waived.

23C-10 EXACTION FUNDS - There is hereby established an exaction fund, containing separate accounts for each Exaction District as set forth in Section 23C-4. Funds shall be deposited and maintained in one or more interest bearing accounts. Interest earned on funds shall be funds of the account on which it is earned and is subject to all restrictions imposed by Section 23C-8. Funds withdrawn from these accounts must be used in accordance with the provisions of Section 23C-8.

23C-11 REFUNDS - Exactions collected shall be encumbered for public facilities cost within six (6) years of the date of collection. In the absence of a development agreement, and in the event the exactions are not encumbered within six (6) years from the date of collection, the Lexington-Fayette Urban County Government shall refund the amount of the exaction to the feepayor. The exactions collected pursuant to this Article shall be returned to the feepayor through submission of a refund application to the Department of Finance by no later than the calendar quarter following seven (7) years from the date the exactions were paid. The refund application shall include the following information:

- (a) a notarized sworn statement that the feepayor paid the exactions for the property and the amount paid;
- (b) a copy of the dated receipt issued by the Lexington-Fayette Urban County Government for payment of the exactions;
- (c) a certified copy of the latest recorded deed for the property;
- (d) a copy of the most recent ad valorem tax bill; and
- (e) a sworn statement of entitlement.

Within thirty (30) working days of receipt of a refund application, the Department of Finance shall determine if it is complete. If the Department of Finance determines the refund application is not complete, the Department of Finance shall send a written statement specifying the deficiencies by mail to the person submitting the refund application. Unless the deficiencies are corrected, the Department of Finance shall take no further action on the refund application.

When the Department of Finance determines the refund application is complete, it shall review it within fifteen (15) working days, and shall approve the proposed refund if it determines the feepayor has paid an exaction which the Lexington-Fayette Urban County Government has not spent or encumbered within six (6) years from the date the exactions were paid. The exactions shall be returned, less five percent (5%) of the total, to defray the costs of administration. Feepayors who are owed a refund for exactions paid or credits given shall receive refunds in the order, by date, that contributions were made.

23C-12 ADMINISTRATIVE APPEALS - Shall be as follows:

- (a) Any person directly aggrieved by a decision of the Lexington-Fayette Urban County Government with respect to any of the following determinations, or is seeking an adjustment to exactions as provided elsewhere in this Article, shall have the right to appeal the decision to the Exaction Appeals Committee:
 - (1) the imposition of an exaction,
 - (2) the amount of an exaction,
 - (3) the entitlement to and/or the amount of credits to an exaction,
 - (4) the entitlement to an exemption from an exaction,
 - (5) the entitlement to and/or the amount of a refund of an exaction, or,
 - (6) the adjustment of exactions under 23C-5(b), 23C-9(e) or 23C-9(f).

The Committee shall consist of a representative of the Mayor's Office, the Commissioner of Public Works, the Commissioner of Finance, and the Commissioner of General Services (or their designated representatives), one member of the Urban County Council, and one member of the Planning Commission. The Committee shall forward its recommendations on any appeal to the Urban County Council as set forth under 23C-12(d) herein.

Prior to any appeal to the Exaction Appeal Committee, the aggrieved party shall file a request for reconsideration with the Department of the Lexington-Fayette Urban County Government which took the action giving rise to the appeal. Such Department shall take final action affirming, modifying, or denying the request within fifteen (15) working days. The file shall constitute the record and shall include all documentation submitted by the developer, as well as any information including appraisals or estimates prepared for the Lexington-Fayette Urban County Government, and which formed a basis for the Department's decision.

- (b) Any appeal shall be taken within fifteen (15) working days of the reconsideration decision by filing a notice of appeal with the Exaction Appeal Committee, setting forth the grounds therefor. The Department shall forthwith transmit to the Exaction Appeal Committee all papers constituting the record upon which the action appealed from is taken. The Exaction Appeal Committee shall thereafter establish a reasonable date and time for a hearing on the appeal, and give due notice thereof to the parties in interest. Any party taking an appeal shall have the right to appear at the hearing to present evidence and may be represented by counsel. The Exaction Appeal

Committee shall render a decision granting, modifying, or denying the appeal within ten (10) working days of the hearing.

- (c) A developer may pay an exaction under protest to obtain a building permit, and by making such payment shall not be estopped from exercising his right of appeal or receiving a refund of any amount determined to have been improperly collected.
- (d) The Exaction Appeal Committee shall be required to maintain records of its actions, including minutes of any official meeting. Such records shall be available for public inspection, and shall be distributed on a routine basis to the Planning Commission and the Urban County Council.

23C-13 PENALTY AND ENFORCEMENT - Any violations of this Article shall be subject to the penalties provided in Article 5 of the Zoning Ordinance. In addition to those remedies, the Lexington-Fayette Urban County Government retains the right to enforce the provisions of this Article by filing an enforcement action in civil court. Knowingly furnishing false information to the Lexington-Fayette Urban County Government on any matter relating to the administration of this Article shall constitute a violation thereof.

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